



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

February 2, 2001

The Honorable Charles R. Sharpe  
Member, House of Representatives  
Box 652  
Wagener, South Carolina 29164

**RE: Informal Opinion**

Dear Representative Sharpe:

By your letter of January 23, 2001, you have requested an opinion of this Office concerning the Capital Project Sales Tax Act. By way of background, you have provided us with the following information: The committee reviewing projects to be funded under the Capital Project Sales Tax Act believed that the actual priority of the projects could be determined after the referendum. So that the committee and the County Council would not have to weigh the comparative necessity of the projects before the referendum, they placed the roads to be improved on the ballot in road number order and allocations to the cities in decreasing monetary value. Now that the referendum has passed, the County has re-prioritized the roads to be improved and the allocations to the cities. You ask if the County is obligated to distribute the monies in the priority delineated in the referendum.

The Capital Project Sales Tax Act, codified at S.C. Code Ann. § 4-10-300 et seq., authorizes county governing bodies to impose a one percent sales and use tax to fund county projects, such as road and facility improvements, if the tax is approved by a referendum of the people. A commission created to study the project proposals formulates the ballot question to be presented to the people. The ballot question is then submitted by the commission to the County Council, which enacts an ordinance containing the ballot question. Section 4-10-330 sets forth the required contents of ordinance, including:

(B) When the tax authorized by this article is imposed for more than one purpose, the enacting ordinance *must set forth the priority* in which the net proceeds are to be

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expended for the purposes stated. The enacting ordinance may set forth a formula or system by which multiple projects are funded simultaneously.

(Emphasis added).

In accordance with Section 4-10-330, the Aiken County Council enacted Ordinance No. 00-08-23, authorizing the referendum and including the ballot question to be presented to the voters.

At the end of the list of proposed road improvements and municipal projects, the ballot question (both in the ordinance and presented to the voters) reads, in part:

... Net proceeds of the capital project sales and use tax, if approved, *must be expended for the purposes stated, in the priority listed above.* The expenditure of revenues from the capital projects sales and use tax, if approved, shall be subject to acquisition of property, right-of-way, design and engineering considerations, funding of projects from other sources, bids in excess of project estimates, qualifications of bidders, cost overruns, financing costs, exhaustion of insufficiency of net sales and use tax revenues to complete the projects in the order and priority stated above and other unforeseen circumstance and conditions.

(Emphasis added). The ballot question approved by County Council and presented to the voters clearly states that the proceeds of the tax will be distributed to projects in the priority listed in the question. Later in the same paragraph the question does state that the priority is subject to change, but that disclaimer appears to justify only changes based on typical unexpected complications of acquisition and construction or "other unforeseen circumstances." In our opinion, a re-prioritization of the projects based on different criteria, which could have been accomplished before submitting the question to the voters, would violate the spirit of the ballot question, if not the exact letter.

In an opinion of this Office dated June 28, 1994, we advised that a city could use its discretion in the precise allocation of funds from municipal bonds. In that case, at the time of the referendum the city planned to apply the proceeds to construct two fire stations. After the referendum passed, the city wanted to use the funds for a purpose other than that which was specified in the referendum. See id. Those circumstances, however, are distinguishable. The Municipal Bond Act, S.C. Code Ann. § 5-21-210 et seq., does not contain a provision requiring the governing body to delineate the priority for projects to be funded, as does the Capital Project Sales Tax Act in § 4-10-330(B). By requiring the county to specify the priority of the projects, the General Assembly has somewhat limited the discretion of the local governing body. The county may choose how to distribute the

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proceeds exactly or may only specify a formula for determining how the various projects will be funded, but in our opinion the county is obligated to expend the proceeds in a manner consistent with that presented to the voters in the referendum.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole  
Assistant Attorney General