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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

November 7, 2001

Joseph Dawson, III, Esquire  
Charleston County Attorney  
4045 Bridge View Drive  
North Charleston, South Carolina 29405-7464

**RE: Informal Opinion**

Dear Mr. Dawson:

By your letter of September 21, 2001, you have requested an opinion of this Office concerning three issues. These issues contain several questions, and I will attempt to answer each question in turn.

**I. Transportation Facilities Financing Statute**

In order to comply with S.C. Code Ann. § 4-37-30 (A)(1)(a):

1. Must a ballot for a half-cent sales tax referendum list individual projects that would be funded by the proceeds of such a tax, or
2. Would it be sufficient merely to describe project categories (e.g., mass transit, roads, green space)

If project categories are sufficient,

1. Can the project categories be identified by reference to a pre-existing program list, and
2. Is it sufficient to show an individual dollar amount for each project category listed on the ballot?

South Carolina Code of Laws Section 4-37-30 empowers counties either to impose a sale and

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use tax, or to authorize an authority established by the county council to "use and impose tolls" in order to provide revenue for a transportation facility. If the sales tax method is chosen, pursuant to Section 4-37-30(A), council may, by ordinance, impose a one percent sales and use tax within its jurisdiction "for a single project or for multiple projects and for a specific period of time to collect a limited amount of money." Pursuant to Section 4-37-30(A)(2), once such sales and use tax is authorized by county council pursuant to the ordinance, "the county election commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the jurisdiction."

The sales and use tax ordinance authorized by the county council must contain specific information concerning the expenditure of the proceeds of the tax. The sections relevant to your inquiry provide:

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or projects for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

(ii) jointly-operated projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or

(iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;

....  
(c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; . . .

S.C. Code Ann. § 4-37-30(A)(1).

The statute only requires that the enabling ordinance include the projects and a description of the projects for which the proceeds will be used. The provision provides few guidelines for how specific the listing of the projects must be in order to comply. The following basic law of Initiatives and Referendum may be helpful:

In the absence of any constitutional or statutory mandate to the contrary, it is not

necessary that a referendum ballot set forth the details of a proposition to be voted upon or otherwise serve the function of educating voters on its merits; a ballot may be sufficient if it presents the proposition in such a manner that the voter has a clear opportunity to express his choice either for it or against it.

42 Am. Jur. 2d § 40 *Initiative and Referendum* (2000). The purpose of the enacting ordinance, like the ballot question, is to educate the public about the substance of the pending referendum. However, although the statute requires that the governing body notify the public of the intended uses of the proceeds of the tax, the county may maintain some discretion in the expenditure of the funds for best interests of the public. For example, in Ramsey v. Cameron, 245 S.C. 189, 139 S.E.2d 765 (1965), the Supreme Court of South Carolina found that pursuant to the Municipal Bond Act, the effect the referendum question is to limit the use of funds for the purposes set forth in the referendum question. How those funds are spent and the precise improvements to which the proceeds are applied are decisions within the discretion of the municipal governing body. *Id.* In Sarrat v. Cash, 103 S.C. 531, 88 S.E. 256 (1916), the Supreme Court addressed the allegation by voters that they had approved a bond referendum based on representations made by school trustees that a school would be built in a certain location; upon approval of the referendum, the school trustees decided to build the school elsewhere. The court denied the plaintiffs' request to enjoin the trustees from building the school at a different locality, upholding the trustees' right to exercise discretion in the matter:

[The trustees] could not, therefore, bind themselves by promises or representation, so as to divest themselves of the right to a free and untrammled exercise of their judgment and discretion for the best interests of their district at the time they were required to act as a body.... It would be contrary to public policy to allow public officers who are charged with the duty of exercising their judgment and discretion ... to bind or fetter themselves by promise or presentation to individuals or to electors of ... the district so that they could not, at all times, act freely and impartially.... The power was conferred upon them for public purposes, and it could not be lawfully bartered away to influence ... votes in the election. The electors are presumed to have known this. Therefore they had no legal right to reply upon the alleged representations, or to be influenced by them in ... voting in the election.

Id. at 535-36, 88 S.E. at 258.

In light of the foregoing, the county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of the funds. In response to your questions, in my opinion, identifying the projects by categories and describing those project categories would suffice for purposes of Section 4-37-30(A)(1)(a). That being said, however, I would encourage as much disclosure to the public as practicable. Thus, although project categories may be sufficient, I would advise against identifying the projects only by reference to a pre-existing program list. The identification and description of the project categories should be adequately detailed in the enacting ordinance. Finally, if identifying the projects by category, the county must

provide an estimated cost of each project category pursuant to Section 4-37-30(A)(1)(c).

## **II. Toll for Arthur Ravenel, Jr., Cooper River Bridge**

1. If the voters approve a toll for the Arthur Ravenel, Jr., Cooper River Bridge in a referendum, can either the City of Charleston or the Town of Mount Pleasant then veto such a toll under S.C. Code Ann. § 57-5-830, which provides that municipalities may review and approve plans for construction of road projects within the municipality?

By way of history, this statute was enacted in 1951, and it is my opinion that it was not intended to address issues such as how a project is financed. To do so would have the effect of vetoing "plans" for a toll plaza. Other statutes specifically address the issue of a toll approved by a referendum, which would override any such interpretation of this statute. Statutes must be construed as being in harmony wherever possible, and the legislature would not have intended a general statute regarding approval of design to be used to frustrate the will of the voters as expressed in a referendum concerning the financing of a road or bridge project.

Although I concur with reasoning regarding the construing of the statutes in harmony, I cannot advise on your ultimate question, which is whether a municipality could halt an approved project that is located within its boundaries. It is our understanding that the history of the initially agreed upon financing of the project is quite complex. Whether the county could proceed to fund the project through the imposition of a toll, over the objection of the municipalities involved, would require the resolution of numerous questions of fact, which are beyond the scope of an opinion of this Office to address. Such a determination would be within the province of the courts or other appropriate fact-finding body that could take into consideration the original obligations undertaken by the county and municipalities to fund the bridge project.

## **III. Restrictions of the Use of Residual Funds**

1. Must the residual funds be used only for the specific projects for which it has been earmarked, or can it be transferred to another project?

South Carolina Code Section 4-37-30(A) also states, in part:

(7) Amounts collected in excess of the required proceeds first must be applied, if necessary, *to complete each project for which the tax was imposed*. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of the imposing political subdivision *on transportation infrastructure debts only*.

(15) The revenues of the tax collected in each county pursuant to this section must be remitted to the State Treasurer and credited to a fund separate and distinct from

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the general fund of the State. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and all interest earned on the revenues while on deposit with him quarterly to the county in which the tax is imposed and *these revenues and interest earnings must be used only for the purpose stated in the imposition ordinance....*

(emphasis added).

In short, the funds must only be used for the purposes specified in the enacting ordinance and referendum. As I stated in the first part of the opinion, counties may maintain some level of discretion in the future expenditure of the funds by identifying project categories, but the actual expenditures must be consistent with that specified in the referendum. If the funds are earmarked for a specific category, then they should not be transferred to another category if excess revenues are generated.

You also ask about the inclusion of a "catch-all" phrase in the enacting ordinance and referendum question which would divert residual funds to other projects. Again, the county is entitled to exercise some discretion in the expenditure of funds, and thus a phrase allowing the diversion of funds to account for unforeseen or unexpected expenses in the development of the project categories may be appropriate. However, Section 4-37-30(A) limits the imposition of the tax "for a specific period of time to collect a limited amount of money." Thus, the tax is not to be used as a revenue generating mechanism for all the various projects the county would like to fund. The county is obligated to notify the public adequately of the intended uses of the proceeds of the tax so that the people can make an informed decision in the referendum. The county is also obligated to expend the proceeds in manner consistent with that presented to the public. Any attempts to fund projects that could have been, but were not, included in the referendum and identified to the public could be seen as a violation of the spirit of Section 4-37-30.

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