



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 13, 1998

The Honorable Robert L. Waldrep
Senator, District No. 3
P.O. Box 2367
Anderson, South Carolina 29622

RE: Informal Opinion

Dear Senator Waldrep:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that a private developer has proposed construction of a major, Class A industrial park in Anderson County. The purpose of the park will be to attract manufacturing industry to Anderson County and the park will contain restrictive covenants limiting its use to that purpose. The Anderson County Economic Development Department, Anderson County Council, and the Anderson County Transportation Committee all believe, and have directly or indirectly noted on the record, that continued economic development, through the attraction of manufacturing industries, is critical to Anderson County and that development of a Class A industrial park for that purpose is likewise a major need of the County at this time. The developer has asked Anderson County to construct and maintain the internal roads within the park and has agreed to dedicate the right-of-way for such roads to Anderson County and to join with the County in further dedicating such roads to public use upon completion. Anderson County has requested that the transportation committee expend up to \$250,000 of otherwise available Anderson County "C" funds for the construction and paving of the roads in question.

With the above facts in mind, you have asked that this Office render an opinion concerning the use of "C" funds to construct public roads which will be utilized as part of a privately owned and developed industrial park contributing to the economic development of Anderson County. Your specific question is whether pursuant to Section 12-28-2740 of the South Carolina Code of Laws, as amended, the Anderson County

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Transportation Committee may designate up to \$250,000 of otherwise available "C" funds from the County's apportionment of such funds to construct and pave roads on rights-of-way provided to Anderson County by a private developer, which roads will become either Anderson County roads or a part of the state highway secondary road system. Your request includes a very thorough analysis of the law in this area, which I greatly appreciate.

The Supreme Court has concluded that industrial development is a public purpose for which public revenues may be appropriated and expended. Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986). As you state in your letter, this Office has previously addressed the question of whether "C" funds may be used to construct and pave roads within an industrial park or an office park. Ops. Atty. Gen. dated August 1, 1986 and June 12, 1989. In the 1986 opinion, this Office approved, with certain conditions, Florence County's use of "C" funds to build roads on private property which it anticipated developing as an industrial park. The 1989 opinion, which relied heavily on the 1986 opinion, also concluded that "C" funds may be used to build roads within an office and light industrial park. The conclusions reached in these opinion were based on the fact that the construction of roads within these industrial and office parks was for a public purpose and, therefore, the expenditure of "C" funds to construct roads was permissible.

Since the time these opinions were issued, the portion of the Code of Laws regarding the distribution and use of "C" funds has been amended and recodified.¹ Therefore, it must be determined whether these amendments have any effect on the continuing validity of the conclusions reached in these opinions. I have reviewed the amendments and, in my opinion, such amendments do not alter the conclusions reached in these prior opinions. In addition, case law permitting the use of public funds for industrial development has only been strengthened since the issuance of these opinions. Therefore, it is still the opinion of this Office that "C" funds may be used to construct roads within an industrial park, as such is for a public purpose. Of course, a final determination of the money to be allocated for such a project and the specifications of the project must comply with the terms of Section 12-28-2740.

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

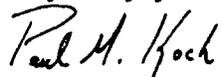
¹ This section was formerly codified as Section 12-27-400 of the Code and is now codified as Section 12-28-2740, entitled "Distribution of gasoline tax among counties."

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specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General