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ALAN WILSON  
ATTORNEY GENERAL

July 28, 2014

Joshua A. Gruber, Esquire  
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Dear Mr. Gruber:

Attorney General Alan Wilson has referred your letter dated June 27, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue (as quoted from your letter):** *"On June 4, 2014, the [Beaufort County] Capital Sales Project Tax Commission voted unanimously to forward to Beaufort County Council a proposed Ordinance calling for a Capital Project Sales Tax Referendum to be placed on the November 4, 2014, general election ballot. The ballot question contained in the Ordinance called for the imposition of an eight year one-cent sales tax to pay for twenty-one different capital improvement projects. The total amount of funding authorized for these projects was \$221 million dollars. Additionally, there was language included in the ballot question that authorized Beaufort County to issue bonds of up to \$240 million dollars to pay for these various projects. This ballot question was forwarded to the Governmental Committee of Beaufort County Council, who, by a vote of 5-1, approved the ballot question as presented and forwarded the proposal to the full body of Beaufort County Council. On June 23, 2014, Beaufort County Council voted 7-4 to deny first reading of the Ordinance as presented."*

*The question that is presented to your office concern the legality of the actions that may be taken by the Capital Project Sales Tax Commission subsequent to the actions that may be taken by the Capital Project Sales Tax Ordinance as presented. Specifically, would it be legally permissible for the Commission to reconvene of its own volition and accord to discuss the actions taken by Beaufort County Council. And, if this is legally permissible, could they then subsequently vote to forward an amended/alternative Ordinance to Beaufort County Council for its consideration. Or, alternatively, would the entire process as outlined in South Carolina Code of Laws § 4-10-300 et seq., need to be repeated in order for the ballot question to be legally presented to the voters?"*

**Short Answer:** This Office believes a court will find that Beaufort County Council must use a ballot question formulated by its Capital Project Sales Tax Commission if the Council proceeds with a referendum but that County Council has the authority to remove any members of the Commission it has the authority to appoint and may even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax.

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**Law/Analysis:**

By way of background, the South Carolina Department of Revenue has authority to "administer and collect" the Capital Project Sales Tax "in the same manner that other sales and use taxes are collected." S.C. Code § 4-10-350. It is this Office's understanding you have already checked with the Department of Revenue on this issue and that they have confirmed with you that this issue is not one they would answer pursuant to the authority given to them concerning the Capital Project Sales Tax. Therefore, this Office will proceed in attempting to answer your question with the understanding that the administrative agency charged with the administration and collection of the tax did not opine regarding your question. Op. S.C. Atty. Gen., 2013 WL 1803941 (April 23, 2013).

South Carolina Code § 4-10-320 authorizes the governing body of a county to create a commission to consider proposals for using the Capital Project Sales Tax. That section states:

(A) The governing body of any county is authorized to create a commission subject to the provisions of this section. The commission consists of six members, all of whom must be residents of the county, appointed as follows:

(1) The governing body of the county must appoint three members of the commission.

(2) The municipalities in the county must appoint three members, who must be residents of incorporated municipalities within the county, and who are selected according to the following mechanism:

(a) The total population of all incorporated municipalities within the county, as determined by the most recent United States census, must be divided by three, the result being an apportionate average.

(b) The respective population of each municipality in the county must be divided by the apportionate average to determine an appointive index.

(c) Each municipality in the county appoints a number of members to the commission equal to the whole number indicated by their appointive index. However, no single municipality may appoint more than two members to the commission; unless there is only one municipality in the county, and in such case the municipality is entitled to three appointments to the commission.

(d) When less than three members are selected to the commission in accordance with the prescribed appointive index method, the remaining member or members must be selected in a joint meeting of the commission appointees of the municipalities in the county. The member or members must be chosen from among the residents of the municipalities in the county that before this time have not provided a representative for the commission.

(e) In the event no municipality is entitled to appoint a member to the commission pursuant to the formula in subitem (c) of this subsection, the municipality with the highest appointive index must be deemed to have an appointive index of one.

(B) When the governing body of any county creates a commission, it must be created in accordance with the procedures specified in subsection (A) and only upon the request of the governing body of the county. If within the thirty-day period following

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the adoption of a resolution to create the commission, one or more of the municipalities fails or refuses to appoint their proportionate number of members to the commission, the county governing body must appoint an additional number of members equal to the number that any such municipality is entitled to appoint. A vacancy on the commission must be filled in the manner of the original appointment.

(C) The commission created pursuant to this section must consider proposals for funding capital projects within the county area. The commission then formulates the referendum question that is to appear on the ballot pursuant to Section 4-10-330(D).

S.C. Code § 4-10-320 (1976 Code, as amended) (emphasis added). The statute continues:

D) The referendum question to be on the ballot must read substantially as follows:

"Must a special one percent sales and use tax be imposed in (county) for not more than (time) to raise the amounts specified for the following purposes?

(1)  
\$ \_\_\_\_\_  
for \_\_\_\_\_

(2)  
\$ \_\_\_\_\_  
for \_\_\_\_\_

(3) etc.

Yes [ ]  
No [ ]"

If the referendum includes the issuance of bonds, the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds.

S.C. Code § 4-10-330(D) (1976 Code, as amended).

This Office has previously opined that a Capital Project Sales Tax Commission is a "creature of statute." Op. S.C. Atty. Gen., 2002 WL 1340434 (May 28, 2002). As you may be well aware, such a creature of statute only has those powers expressly conferred or necessarily implied to effectively and successfully accomplish the duties with which it is charged. S.C. Coastal Conservation League v. S.C. DHEC, 363 S.C. 67, 610 S.E.2d 482 (2005); Op. S.C. Atty. Gen., 2014 WL 2619140 (May 30, 2014) (citing Captain's Quarters Motor Inn v. S.C. Coastal Council, 306 S.C. 488, 413 S.E.2d 13 (1991)). South Carolina Code § 4-10-320(B) specifically references "the adoption of a resolution to create the commission." Thus, the statute denotes a resolution to form the commission. It goes without saying the Commission must conform to whatever limitations or requirements are given to it by the statutes governing it and the resolution creating it.

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Moreover, the code states that “the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum.” S.C. Code § 4-10-310 (1976 Code, as amended) (emphasis added). The statute is clear that county council is under no obligation to impose a one percent sales and use tax and that implicitly if council chooses not to go forward with the tax, they are not required to proceed with a referendum. Id. However, once county council chooses to go forward with the tax pursuant to ordinance, the election commission is required to conduct the referendum pursuant to statute. S.C. Code § 4-10-330(C). Returning to the code, Section 4-10-330(A) requires the tax be implemented after referendum approval by an ordinance by the county governing body with “the ballot question formulated by the commission pursuant to Section 4-10-320(C).”

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Therefore, we will look to a clear and unambiguous meaning of the statutes. Based on a reasonable interpretation of the requirements, it would seem the county governing body (Beaufort County Council) is under no obligation to proceed with a tax if it chooses not to, but if council chooses to proceed with the tax, the council must use “the ballot question formulated by the [Capital Project Sales Tax] commission.” S.C. Code § 4-10-330(A).

This Office has previously opined on numerous occasions that the power to remove is incidental to the power to appoint. See, e.g., Op. S.C. Atty. Gen., 2007 WL 655119 (February 16, 2007); 2006 WL 1207275 (April 27, 2006); 2006 WL 148721 (January 3, 2006). The power of appointment implies the power of removal at the pleasure of the appointing authority. 8 S.C. Jur. *Public Officers & Public Employees* § 12 (2014) (citing Langford v. State Bd. Of Fisheries, 217 S.C. 118, 60 S.E.2d 59 (1950); State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948)). This Office has previously opined a position on a Capital Project Sales Tax Commission would likely be a public office for dual office holding purposes. Op. S.C. Atty. Gen., 2002 WL 1340434 (May 28, 2002). Removal at the pleasure of the appointing authority would apply to a commission such as the Capital Project Sales Tax Commission as the terms of this public office is not set by statute. 8 S.C. Jur. *Public Officers & Public Employees* § 12 (2014) (citing State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948)). Therefore, County Council, as the appointing agency for the Capital Project Sales Tax Commission, would have the authority to remove members. Moreover, county government is authorized by statute to establish and abolish commissions. S.C. Code § 4-9-30(6). How Beaufort County Council and its Capital Project Sales Tax Commission decide to proceed beyond the scope of the law is a factual question, which this Office

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does not answer. This Office issues legal, not factual opinions. Op. S.C. Atty. Gen., 1996 WL 590391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).

**Conclusion:** This Office believes a court will find that Beaufort County Council must use a ballot question formulated by its Capital Project Sales Tax Commission but that it has the authority to remove any members of the Commission it appointed and even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax. However, for a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law can interpret statutes. S.C. Code § 15-53-20, et al. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General