ALAN WILSON
ATTORNEY GENERAL

April 5, 2021

John Andoh
Executive Director/CEO
Central Midlands Regional Transit Authority
3613 Lucius Road
Columbia, South Carolina 29201

Dear Mr. Andoh:

We received your letter requesting an opinion of this Office addressing "whether Richland County must pay the Central Midlands Regional Transit Authority ('the COMET') the interest earned on funds collected under Richland County Ordinance No. 039-12HR . . . ." By way of background, you informed us that Richland County passed an ordinance in 2012 imposing a one percent sales and use tax pursuant to section 4-37-30 of the South Carolina Code (2021) to pay for three transportation projects. The voters approved the ordinance by referendum on November 6, 2012. According to Ordinance No. 039-12HR (the "Ordinance"), the imposition of the sales and use tax could not exceed twenty-two years and

> [t]he maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of $1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed $1,070,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects.

The three transportation projects listed in the Ordinance are as follows:

(i) Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements. Amount: $656,020,644;

(ii) Continued operation of mass transit services proved by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service -improvements. Amount: $300,991,000; and

(iii) Improvements to pedestrian sidewalks, bike paths, intersections and greenways. Amount: $80,888,356.

According to your letter, the South Carolina Department of Revenue (the "DOR") began collecting the tax on May 1, 2013 and the State Treasurer began remitting the revenues, less the

administrative expenses incurred by the DOR in collecting the tax, to Richland County (the "County"). You informed us that the revenues collected by the DOR earn interest, which the DOR includes in payments to the County. You also state the County earns interest on the revenue prior to monthly disbursements to the COMET. You declare the COMET made repeated requests to the County for what you believe is the COMET's share of interest, but the County refused to remit the interest to the COMET. We understand the County takes the position that state law does not require the disbursement of the interest on a pro rata basis and only mandates the interest be used for purposes for which it was imposed. The County also cites to an intergovernmental agreement between the COMET, the County, and several other stakeholders as further evidence that the County is not obligated to remit the interest to the COMET. Accordingly, you ask us to determine whether the interest should be "split on a pro rata basis between the three projects identified in the County's ordinance." Furthermore, if the interest is not required to be split on a pro rata basis, then you ask whether the intergovernmental agreement may be amended to provide for such an allocation of interest.

Law/Analysis

In regard to whether the interest must be allocated to each project on a pro rata basis, we first must determine whether such an allocation is required by state law. Section 4-37-30 of the South Carolina Code (2021), contained in the Optional Methods for Financing Transportation Facilities Act (the "Transportation Act"),[1] governs the imposition of sales and use taxes to fund transportation facilities. Section 4-37-30(A) allows the governing body of a county to "impose by ordinance a sales and use tax in an amount not to exceed one percent 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." Thus, we look to this provision to determine if pro rata allocation of the interest is required. Section 4-37-30(A)(15) contains the only mention of interest in this statute and provides as follows:

> 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 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. The State Treasurer may correct misallocations by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively.

[1] S.C. Code Ann. §§ 4-37-10-50 (2021).

(emphasis added).

In construing section 4-37-30, we must keep in mind the general rules of statutory construction followed by our courts.

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Centex Int'l, Inc. v. S.C. Dep't of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019).

Based on our plain reading of section 4-37-30(A)(15), it simply requires the State Treasurer to distribute the interest earned while on deposit with him or her to the County and mandates it be only used for "the purposes stated in the imposition." This provision does not address interest earned while the revenue is on deposit with DOR or the County. However, we take notice of the fact that the statute requires interest earned on the revenue while deposited with the Treasurer to be remitted to the County and used only for the purposes stated in the imposition. We believe this portion of the statute conveys the Legislature's intent for all proceeds from the imposition, unless allocated for the cost of administering the tax, to be used for the purposes of the imposition. As such, we believe a court would find interest earned on revenue from the tax while on deposit with the DOR should be remitted to the County and the County should use all interest it receives or earns for the purposes for which the tax was imposed.

Section 4-37-30(A)(15) also does not address how the interest should be allocated among the projects listed in the ordinance, just that it should be used for "the purpose stated in the imposition." As we mentioned above, the statute's "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Adkins v. Comcar Indus., Inc., 323 S.C. 409, 411, 475 S.E.2d 762, 763 (1996). Furthermore, courts "are not at liberty, under the guise of construction, to alter the plain language of a statute by adding words that the legislature saw fit not to include." First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC, 422 S.C. 461, 471, 812 S.E.2d 418, 423 (Ct. App. 2018) (citations omitted) (quotations omitted). The statute does not contain a requirement that interest be allocated pro rata among the projects. Therefore, a court may not read such a requirement into the statute.

However, in the past, our Supreme Court recognized what it termed as the "majority rule" that "the interest earned . . . is simply an increment of the principal fund, making the interest the property of the party who owned the principal fund . . . ." Univ. of S. C. v. Elliott, 248 S.C. 218, 220, 149 S.E.2d 433, 434 (1966). In Elliott, the Court recognized the University of South Carolina had a property right in the interest earned on funds it deposited in a condemnation proceeding. Id. We have similarly recognized this principle in past opinions pertaining to interest earned on a cemetery maintenance fund and interest earned on bond anticipation notes. Ops. Att'y Gen., 1988 WL 485339 (S.C.A.G. Nov. 16, 1988); 1981 WL 96529 (S.C.A.G. Jan. 9, 1981). Accordingly, a court could find the COMET has a property interest and therefore is entitled to the interest earned on the principle allocated to the COMET. As such, denying the COMET interest could result in due process implications.[2] Nonetheless, we suggest you seek guidance from a court or possibly from the DOR to clarify this issue.[3]

Regardless of whether the County is legally required to pay interest to the COMET, we do not believe section 4-37-30 prohibits the County from allocating interest on a pro rata basis. Section 4-37-30(A)(15) requires interest earned be used for the purposes stated in the imposition, which in this case would be the three projects listed. Therefore, the interest must be allocated to at least one if not more of the projects. See Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 312, 811 S.E.2d 758, 768 (2018) (instructing "[a] proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project."). We understand the COMET and the County entered into an intergovernmental agreement which includes terms addressing the COMET's allocation of funds from the tax. In our review of the agreement, we did not find a provision addressing the allocation of the interest,[4] but certainly this could be addressed in the agreement if the parties chose to do so.

Conclusion

Employing the general rules of statutory construction, we believe the Legislature likely intended interest earned on sales and use tax revenue while on deposit with the DOR and the County be treated similarly to interest earned on such revenue while on deposit with the State Treasurer. Therefore, we advise that any interest earned on sales and use tax revenue while on deposit with

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[2] No person shall be deprived of property without due process of law. U.S. Const. amend XIV, § 1; S.C. Const. art. I, § 3.

[3] The DOR generally has the authority to "administer and enforce the revenue laws of this State." S.C. Code Ann. § 12-4-10 (2014). Regarding the imposition of sales and use taxes pursuant to the Transportation Act, section 4-37-30(A)(8) gives the DOR authority to administer and collect the tax. Furthermore, section 4-37-30(A)(17) gives the DOR the authority to "promulgate regulations necessary to implement" section 4-37-30. To our knowledge, the DOR has not commented on or issued a regulation pertaining to the allocation of interest to the projects listed in the ordinance. However, given the extensive administrative and regulatory authority given to the DOR by the Legislature, we also suggest you seek guidance from the DOR regarding this issue.

[4] Please note, this Office is "not empowered to interpret contracts." Op. Att'y Gen., 2019 WL 3523691 (S.C.A.G. July 22, 2019). Additionally, this Office has refrained from resolving factual issues related to intergovernmental agreements. See Op. Att'y Gen., 2003 WL 21691879 (S.C.A.G. July 1, 2003).

the DOR should be disbursed to the County and the County should use the interest it receives or earns only for the purposes of the imposition of the tax.

Section 4-37-30(A)(15) requires interest earned to be used for the purpose stated in the imposition. However, we did not find any provision in section 4-37-30 requiring interest be paid on a pro rata basis to the projects specified in the ordinance. As such, a court may not read such a requirement into the statute. However, in Elliott, 248 S.C. at 218, 149 S.E.2d at 433, our Supreme Court recognized the common law principle that interest follows the principal. Based on this principle, a court may find interest earned on the funds earmarked for the COMET belong to the COMET. Nevertheless, should a court find an allocation of interest is not required, we do not believe section 4-37-30 prohibits the County from allocating interest on a pro rata basis among the projects.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General