



ALAN WILSON
ATTORNEY GENERAL

April 9, 2026

William S. Cogswell Jr., Mayor
City of Charleston
180 Lockwood Boulevard, Suite C
Charleston, SC 29403-5121

Dear Mayor Cogswell:

You seek our opinion regarding use of "Transportation Sales Tax" funds. By way of background, you state the following:

[t]he Battery Extension project is a critical infrastructure initiative and one of the city's highest priorities for potential funding as part of Charleston County's 2026 Transportation Sales Tax referendum. This project is a key component to keeping water off our roads, and it will address systemic problems that adversely impact our safe navigation of city streets. The project is intended to address longstanding transportation challenges on the Charleston peninsula by improving connectivity, enhancing mobility, and strengthening reliance during flooding events. Given its anticipated long-term public benefits, the project is central to the City's broader transportation and resilience strategy.

The City has been working closely with Charleston County officials to identify and refine projects for possible inclusion in the 2026 referendum, and they are supportive. We have also engaged with the South Carolina Department of Revenue, and they were in agreement that transportation sales tax funds could be used for a project of this nature.

Considering this feedback, and to ensure full compliance with applicable state laws, we seek your office's guidance on whether the proposed Battery Extension project meets the legal criteria for inclusion in and funding through a county transportation sales tax program.

The materials you have submitted argue that "the Battery Extension is an appropriate use of TST funds." Your materials submitted state the following:

... Lockwood, Morrison and East Bay have experienced an estimated 1,238 closures over the last five years due to heavy rainfall and tidal flooding. About 70%

of our major tidal flooding events have occurred in just the past 10 years, and these events are projected to triple over the next 25 years.

... In addition to keeping key roads safe and passable during flooding events, the Battery Extension is designed to function 365 days a year as a linear park with pedestrian and bike path, improving connectivity between West Ashley, the broader region, and the entire peninsula.

The Battery Extension will create approximately five miles of public waterfront access.... We propose using TST funds only on the portion of the Battery Extension that directly protects Lockwood, Morrison and East Bay Streets.

The approximate local cost for this protective segment is \$300M....

City, state, and private dollars will fund the remaining local match for the project, helping unlock nearly a billion dollars in federal funding.

On the other hand, we understand that there has been considerable concern expressed as to whether the Battery Extension project would qualify for funds from the Transportation Sales Tax. The concern, as we understand it, is that the project is primarily for “drainage” rather than a “transportation” project. See Editorial, Charleston Post and Courier, Sept. 13, 2025 [“And there’s no question that the primary purpose of the Battery Extension project is drainage.”].

It is our opinion that a court would most probably conclude that the proposed use of Transportation Sales Tax funds is lawfully authorized as a “transportation-related project,” should the voters choose to vote in favor thereof.

Law/Analysis

Long before the passage of the Transportation Sales Tax Act (§ 4-37-10 *et seq.*) former Attorney General McLeod issued an opinion regarding the propriety of expending public funds for control of flooding of city streets. While the opinion does not, of course, deal with your question directly, it is instructive. In Op. S.C. Atty Gen., 1970 WL 12114 (January 14, 1970), General McLeod addressed the question of flooding in the City of Aiken and a project “undertaken jointly by the county, city and state Highway Department to undertake flood control measures.... Each governmental unit will contribute one third of the cost of the flood control project.”

The question posed to the Attorney General was “whether the city, county and state may lawfully expend public moneys for this purpose in the manner proposed.” According to General McLeod,

I advise that, in the opinion of this office, the expenditure of county funds and state funds, as well as city funds, is clearly authorized for this purpose. Each governmental unit has authority to expend funds for the maintenance of roads and streets, and the project proposed appears to come clearly within the scope of each political subdivision. The Supreme Court of South Carolina has recently recognized that the state, counties and cities may cooperatively enter into ventures which they are authorized to undertake.

In short, the opinion recognized that flood control is an integral part of transportation operation. Implicitly, the opinion concluded that flood prevention is a part of the upkeep of city streets.

With this background in mind, we turn now to the use of Transportation Sales Tax funds. The Transportation Sales Tax is authorized at § 4-37-10 *et seq.*

In Op. S.C. Atty. Gen., 2007 WL 655622 (February 16, 2007), we discussed the purpose of this Tax as follows:

Chapter 37 of Title 4 of the South Carolina Code provides optional methods for financing transportation facilities. S.C. Code Ann. §§ 4-37-10 *et seq.* (Supp. 2005). Section 4-37-30 affords counties the ability to impose a sales and use tax or tolls to finance the costs of highways, roads, streets, bridges and other transportation-related projects. This provision provides as follows:

To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of Item (B):

(A) Subject to the requirements of this section, the governing body of a county may 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.

Our opinion continued to quote from the statute as follows:

(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-item (i) of the county and South Carolina Department of Transportation....

The decision of the Court of Appeals in S.C. Pub. Int. Foundation et al. v. Richland County, et al., 436 S.C. 271, 871 S.E. 2d 599 (Ct. App. 2021) is particularly instructive with respect to the purpose of the Transportation Sales Tax legislation. In that case, the question was whether it was lawful to use Transportation Sales Tax funds to fund the continued operation of a mass transit bus system. It was argued that Penny Tax funds could only be used for the bus system's "capital expenditures," not its continued operation. According to the argument, "capital costs" were one time costs for infrastructure.

The Court of Appeals disagreed. According to the Court, legislative findings for the Act's passage allowed counties to finance the costs of "acquiring, designing, constructing, equipping and operating highways, roads... and other transportation-related projects." 436 S.C. at 275, 871 S.E. 2d at 601 (emphasis in original).

Thus, the Court concluded that "we agree with the circuit court that the statute's language authorizes spending on operating transportation-related projects...." (emphasis is added). Accordingly, based upon this decision, Penny Tax funds may be spent to aid in the "operation" of "transportation-related projects." This would likely include the support and "operation" of present streets and roads through the use of a flood control project.

As our Supreme Court advised in Richland Cnty. v. S.C. Dept. of Revenue, 422 S.C. 292, 311-12, 811 S.E. 2d 758, 768 (2018),

[i]t is axiomatic that the county's ordinance may not expand the scope of expenditures authorized in the enabling provisions of the Transportation Act, which

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requires a nexus between expenditures and a transportation-related capital project. (citing § 4-37-10 (A)(1)(a)-(c)). . . . 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. (emphasis added).

Based upon the information you have provided, it is our opinion that a court would most probably conclude that the Battery Extension Project likely meets this test.

Conclusion

In our opinion, a court would likely conclude that Transportation Sales Tax funds could be validly used for the Battery Extension project, as described in your letter, should the voters approve in November. As Attorney General McLeod recognized, expenditure of funds for a flood control project, designed to minimize flooding on existing roads and streets, is valid. And, as the Court of Appeals concluded in Richland County, expenditure of Transportation Sales Tax funds for a bus system's continued operation is lawful because one of the purposes of the Tax is to support the "operation" of "transportation-related projects." County Council (and the voters, if they agree) would determine that flood control is part and parcel of the existing "operation" of city streets. In our opinion, such would constitute a "transportation-related project." Thus, a court could well conclude, based upon these authorities, that these funds may be used to support the operation of present streets and roads through the avoidance of flooding. Of course, our opinion is an analysis of the law and not a comment upon whether this project should or should not be adopted.

Sincerely,



Robert D. Cook
Solicitor General