



ALAN WILSON
ATTORNEY GENERAL

March 17, 2025

William "Debo" Kelly, III
General Counsel
Office of the Adjutant General
1 National Guard Road
Columbia, SC 29201

Dear William "Debo" Kelly, III:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an expedited response addressing the following:

I am writing to you regarding a matter important to our Adjutant General. At issue is authority relating to a lease out of real estate held for the State by the Adjutant General, as well as approximately \$700,000 in lease revenue and an identical amount in federal matching funds that our agency would use for Readiness Center maintenance over the 25-year lease term. A conflict has arisen between our office and the South Carolina Educational Television Commission ("ETV") regarding authority and responsibilities in connection with this "Fort Mill Lease," which affects a small part of the site on which the Fort Mill Army National Guard Readiness Center is located. ETV generally asserts no authority with regard to our leasing or rental activity but, because the current lessee, American Towers, LLC ("American Towers") and its predecessors, constructed a cell tower, and then subleased--or licensed--space on their tower to various wireless carriers, ETV asserts that it must approve the lease terms and will receive most of the revenue from it. Accordingly, I am requesting an Attorney General's opinion addressing an apparent conflict between two provisos in Part 1B, of the current state appropriations act--Proviso §100.1, governing leasing and revenue of state property held by the Adjutant General, and Proviso §8.4, governing ETV's purported authority to "coordinate" and collect revenues from "tower and antenna operations within South Carolina state government." And I am hopeful that you might specifically address ETV's authority, if any, to approve or disapprove of the lease terms, and its rights to that revenue, by our March 18th deadline for submission of the Fort Mill Lease to the South Carolina Department of Administration ("Administration") and the Joint Bond Review Committee ("JBRC").

A lease, or series of leases, has been in effect at our Fort Mill site since 1994. The lessees have either had the option to, or a requirement to, remove that tower and related material at lease termination. So, our agency has never owned the tower and has never used the tower and antennae placed on it. To date, our agency has used the lease proceeds in accordance with authority found at South Carolina Code §25-1-1620, as well as Proviso § 100.1 and prior annual provisos.

Our state’s permanent code states that the Adjutant General “may receive on behalf of the State conveyances of real property suitable for the erection of any required training facility,” and goes on to state that he “shall be the State custodian and manager of training facilities...” S.C. Code §§ 25-1-1610 and 25-1-1620. Subject to recommendations from local military officers in charge of the specific military training facility being leased or rented, the Adjutant General approves all rentals and subleasing. S.C. Code § 25-1-1620. An annual proviso, currently designated as Proviso § 100.1, provides that he “is authorized to rent, lease, or sublease any area under his ownership or control including facilities, unimproved real estate, and parking areas.” The proviso further authorizes him to “collect funds received from any sources including ... short or long-term lease or rental payments” and directs that those funds be “retained and expended as authorized by the Adjutant General.” The funds are used for maintenance of the readiness centers or other National Guard facilities where a 50% federal match generally applies.

The portion of ETV’s Proviso §8.4 which is at issue reads as follows:

The Educational Television Commission is directed to coordinate tower and antenna operations within South Carolina state government. The commission shall (1) approve all leases regarding antenna placement on **state-owned towers** and buildings, (2) coordinate all **new tower construction** on state-owned property, (3) promote and market excess capacity on the States wireless communications infrastructure, (4) generate revenue by leasing, licensing, or selling excess capacity on the States wireless communications infrastructure, and (5) **construct new communications assets** on appropriate state-owned property for the purpose of generating revenue pursuant to this proviso. The commission shall retain and expend such funds for agency operations.

During our February MS Teams meeting, ETV's position was that, while none of the language in the five Proviso §8.4 subsections specifically apply to the Fort Mill Lease, the "spirit of the law" dictates that ETV centrally-manage the State's leases of property involving cell towers and that ETV is to receive the revenue, less an amount offered to the agency based on fair market value of its unimproved real estate. In response to a request from the Administration representative, ETV provided a memorandum authored by Mr. Jeter, opining on the applicability of §8.4 to the Fort Mill Lease. His analysis and conclusion read as follows:

The first sentence is a broad directive to ETV "to coordinate tower and antenna operations within South Carolina state government." There then follow five specific grants of authority in the next sentence. The question is whether tower and antenna operations in state government which are not found in the five specific authorizations, fall within the authority of ETV. It is my opinion that the general grant of authority in the first sentence is not limited to the specific grants of authority in the second sentence. There are no words of limitation that would indicate such an interpretation. To say that the only authority granted to ETV are the specifics in the second sentence would render the first sentence a nullity. Furthermore, if one argues Proviso 8.4 is to be construed narrowly as being limited to the enumerated powers in the second sentence, that would then leave ETV, which has the most expertise in state government regarding tower and antenna operations, without the power to manage anything which is not specifically enumerated.

In my opinion, ETV has the authority to coordinate tower operations within South Carolina government, which would include a private tower built on state land from which a state entity receives funds out of the tower operations.

...

During our February meeting and in its memorandum from outside counsel, ETV conceded that not one of the five listed subitems in §8.4 would apply to our Fort Mill Lease. Its position is that §8.4's first sentence provides it with authority to renegotiate terms of that lease and that the third sentence provides it with use of that revenue. ...

As indicated in the introduction, I am hopeful that you might provide your opinion in time for our agency to meet the March 18th deadline. I would,

respectfully, request that your opinion address the following: Does Proviso § 8.4 entitle ETV to the revenue from the Fort Mill Lease?

Law/Analysis

As an initial matter, it should be noted that this Office is issuing an expedited opinion, and it should be read in the context of this Office’s prior opinions and other applicable law. Additionally, this Office’s opinions cannot find facts but will often assume the facts presented by the requestor for purposes of analysis. See Op. S.C. Att’y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.”). The request letter and attached documents detail prior lease agreements, a proposed 2025 lease agreement, and purported positions of ETV’s counsel on Proviso §8.4 and its application to the proposed 2025 lease agreement. This opinion will assume the facts presented in order to analyze the question asked.

While there are reasonable arguments to the contrary, it is this Office’s opinion that 2025-2026 Budget Proviso § 8.4 does not entitle ETV to revenue from the proposed Fort Mill Lease. To resolve the issue presented regarding the interplay of two budget provisos, this opinion will rely on the rules of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly’s intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered superfluous.” Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. Statutes § 346) (internal quotations omitted). Where statutes deal with the same subject matter, it is well established that they “are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010). However, any ambiguity may be resolved by the rule of statutory construction that all parts of a statute should be construed together but if an irreconcilable conflict exists, the statute later in time (or position), if within the same act, will prevail as the later expression of legislative will. Op. S.C. Att’y Gen., 1990 WL 599217, at 2 n.2 (March 6, 1990).¹ And finally, “[i]n seeking the intention

¹ See Feldman v. S.C. Tax Comm’n, 203 S.C. 49, 26 S.E.2d 22, 24 (1943)

In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails. State v. Lewis, 141 S.C. 207, 139 S.E.

of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing.” State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). With these principles in mind, this opinion will examine both provisos §§ 8.4 and 100.1 and their applicability to relevant terms in the proposed lease.

As described in the request letter, the first sentence of Proviso § 8.4 directs ETV “to coordinate tower and antenna operations within South Carolina state government.” The second sentence includes five mandates to ETV connected to those operations that generate revenue.

The commission shall: (1) approve all leases regarding antenna placement on state-owned towers and buildings; (2) coordinate all new tower construction on state-owned property; (3) promote and market excess capacity on the State’s wireless communications infrastructure; (4) generate revenue by leasing, licensing, or selling excess capacity on the State’s wireless communications infrastructure; and (5) construct new communications assets on appropriate state-owned property for the purpose of generating revenue pursuant to this proviso.

Id. (emphasis added). The third sentence states, “The commission shall retain and expend such funds for agency operations.” Id. (emphasis added). When used in this context, “such” is an adjective that refers to previously identified funds. See Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/such> (“of the character, quality, or extent previously indicated or implied”); see also The American Heritage Dictionary 1356 (3rd ed. 1993) (Such is defined as “adj. 1.a. Of this kind.”). “Such funds” clearly applies to the revenue generated by ETV from the number activities in the second sentence. It seems conceded, however, that the Fort Mill lease does not fall within any of those listed activities.

The question then is whether “such funds” in the third sentence can fairly be read to include the “direct[ion] to coordinate tower and antenna operations within South Carolina state government” in the first sentence. While there are reasoned arguments that the direction to coordinate tower and antenna operations should be read broadly, that does not necessarily mean the General Assembly intended it to redirect revenue to ETV at the expense of other state entities. There very well may be additional actions that ETV takes beyond those specifically listed in the second sentence. For example, the coordination of tower and antenna operations could include

386; State v. Brown, 154 S.C. 55, 151 S.E. 218; 59 C.J. § 596, p. 999. However, this is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted.

accounting for projects that have been approved for long-term leases before Proviso 8.4 was adopted and locating new projects to avoid overlapping with existing infrastructure. The antenna operations developed after Proviso 8.4 became effective that generate revenue would fall within the listed mandates in the second sentence and be retained by ETV, while preexisting agreements entered into by other state bodies would continue to generate revenue to support their operations. ETV would coordinate among both categories of tower operations, but only retain “such funds” where its actions had “generate[d] revenue” rather than redirecting revenue generated by another state entity. Without a clearer statement of legislative intent, it is this Office’s opinion that a court would not find the General Assembly intended the broad directive to “coordinate” in Proviso 8.4 to authorize it to retain funds that are otherwise generating revenue for another state body.

It appears the language in Proviso 8.4 was previously interpreted not to displace the Adjutant General’s authority to retain revenue from the Fort Mill Lease. When the Lease was renewed in 2008, 2008-2009 General Appropriations Bill Proviso § 80 A.8 authorized the Budget and Control Board to similarly “coordinate tower and antenna operations within South Carolina state government.” The Board was given the same directive, the five numbered mandates, and the authority to retain funds.

The Budget and Control Board is directed to coordinate tower and antenna operations within South Carolina state government. The Board shall (1) approve all leases regarding antenna placement on state owned towers and buildings, (2) coordinate all new tower construction on state owned property, (3) promote and market excess capacity on the State’s wireless communications infrastructure, (4) generate revenue by leasing, licensing, or selling excess capacity on the State’s wireless communications infrastructure, and (5) construct new communications assets on appropriate state owned property for the purpose of generating revenue pursuant to this proviso. All revenue from tower and antenna leases and contracts after July 1, 2001 must be remitted to a separate fund established by the Board to create and support a statewide public safety communications system.

Id. If the Budget and Control Board interpreted the Proviso’s first sentence directive to coordinate in the same manner as ETV, then the revenue from the 2008 Fort Mill lease would have been remitted to the separate fund. However, based on the facts presented in the request letter, the revenue generated by that renewed lease agreement was retained by the Adjutant General, not by the Budget and Control Board. The General Assembly appears to have acquiesced to this limited construction of the first sentence because it maintained the same operative language in later provisos while merely shifting which state entity is responsible for its application. Without a clearer statement of intent to expand the Commission’s authority beyond that granted to the Budget

and Control Board, it seems unlikely the General Assembly intended the general grant of authority in the first sentence of Proviso § 8.4 to control over the specific grant of authority in Proviso 100.1 for the Adjutant General to lease real estate under his control and to retain such funds. Because the prior provisos with the same operative language did not displace the Adjutant General’s authority to lease land under his ownership and control and to retain the funds generated thereunder in 2008, a court is unlikely to hold that Proviso § 8.4 authorizes ETV to retain revenue generated by the proposed Fort Mill Lease.

Proviso § 100.1 authorizes the Adjutant General to lease property under his ownership and control.

The Adjutant General is authorized to rent, lease, or sub-lease any area under his ownership or control including facilities, unimproved real-estate, and parking areas. The Adjutant General is authorized to collect funds received from any sources including, but not limited to, county and city appropriations, short or long-term lease or rental payments, revenues from vending machines, military justice fines or other monetary penalties, federal reimbursements under cooperative agreements, and gifts to the agency. These revenues shall be retained and expended as authorized by the Adjutant General.

Id. The request letter posits that the proposed lease is a lease of real-estate that is authorized thereunder rather than under Proviso 8.4. The recitals in the proposed lease state the “Lessee has installed and operates a “Telecommunications Facility,” which includes a mast cell tower approximately 199’ in height (the “Tower”), on that certain real property.” Section 16 on page 9 explicitly states, “The Telecommunications Facility shall not become a fixture of the Premises but shall be and remain Lessee’s personal property.” Finally, the Lessee must remove the Telecommunications Facility and return the real property “in a good and usable condition... no later than thirty (30) days after the expiration or other termination of this Agreement.”² Assuming these facts, a fact finder may well conclude that the proposed lease is, in fact, a lease of real estate under the ownership and control of the Adjutant General as authorized under Proviso § 100.1.

² Subsection 16(b)(i) states:

Lessee shall remove the Telecommunications Facility and all other personal property from the Real Property, the Premises, and the ROW Areas, and will return the Real Property, the Premises, and the ROW Areas to Lessor in a good and usable condition, normal wear and tear excepted (collectively, the "Lessee Removal Obligations"), in Lessor’s sole determination, no later than thirty (30) days after the expiration or other termination of this Agreement (the “Removal Period”).

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To the extent that Proviso § 8.4 and Proviso § 100.1 are found to irreconcilable conflict as applied to the proposed Fort Mill Lease, it is this Office's opinion that Proviso § 100.1 would prevail as it is in the latter position within the same legislation. See Feldman, supra.

Conclusion

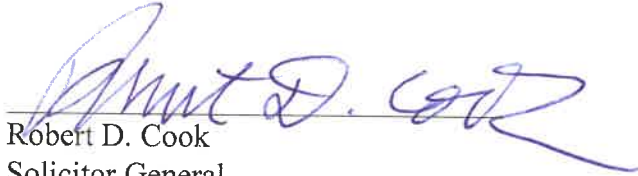
For the reasons discussed more fully above, while there are reasonable arguments to the contrary, it is this Office's opinion that 2025-2026 Proviso Budget § 8.4 does not entitle ETV to revenue from the proposed Fort Mill Lease.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General