



ALAN WILSON
ATTORNEY GENERAL

November 15, 2022

Paul W. Dillingham, Esq.
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Dear Mr. Dillingham:

We understand your firm represents the City of Rock (the “City”) and you desire an opinion from this Office on behalf of the City concerning the South Carolina Capital Projects Sales Tax Act. Your question pertains to the commissions created pursuant to section 4-10-320 of the South Carolina Code (2021), which are charged with considering proposals for capital projects and formulating referendum questions for the funding of proposed projects. Specifically, you ask whether “[i]f under S.C. Code Ann. § 4-10-320(A)(2)(c) only the City is able to appoint a commission member, does S.C. Code Ann. § 4-10-320(A)(2)(d) provide that the City appointed commission member thereby appoints the two remaining commission appointees of municipalities?”

Law/Analysis

The answer to your question necessitates an interpretation of section 4-10-320 of the South Carolina Code. When interpreting this statute, we must keep in mind the primary rule of statutory construction, which is “to ascertain and effectuate legislative intent.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The best evidence of legislative intent is gleaned from the text of the statute. Id. “[A] court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute’s operation.” State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622-23 (2011) (citations omitted).

Section 4-10-320 provides in pertinent part:

(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.

....

In your letter, you informed us that “[u]nder the statute and using the latest census numbers, the City is the only municipality in York County that is able to appoint an initial municipal member to the commission. The City has made this appointment, leaving two (2) additional municipal members to be selected.” Based on this information, pursuant to section 4-10-320(A)(2)(c), we presume the City is the only municipality with an appointive index greater than one, but its appointive index is less than two. Therefore, initially, the City may only appoint one member to

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the commission pursuant to section 4-10-320(A)(2)(c). As such, you question how the other two municipal members of the commission are to be appointed.

You reference section 4-10-320(A)(2)(d), which requires “the remaining member or members must be selected in a joint meeting of the commission appointees of the municipalities in the county.” Based on a plain reading of this provision, the municipal appointees who have already been appointed to serve on the commission pursuant to the appointive index method select the remaining member or members. According to the information you provided, the City’s appointee is the only member appointed through the appointive indexing process. Therefore, we agree with your opinion that the City’s appointee, as the only appointee of the municipalities in the county, may appoint the other two municipal members of the commission.

Conclusion

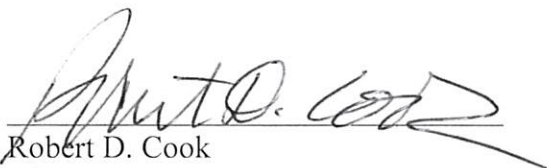
According to section 4-10-320(A)(2), which governs the creation of commissions under the Capital Project Sales Tax Act, when less than three municipal members are appointed using the appointive index method, the Legislature gives the municipal appointees who have been appointed using such method the authority to appoint the remaining members. Therefore, when only one municipal member is appointed under the appointed index method, we believe the Legislature intended to allow that member to appoint the two remaining members.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General