



ALAN WILSON
ATTORNEY GENERAL

March 31, 2022

Francenia B. Heizer, Esq.
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Post Office Box 11390
Columbia, South Carolina 29211

Dear Ms. Heizer:

We received your letter requesting an opinion of this Office on behalf of Lancaster County (the "County"). In your letter, you provided us with the following information: "The County has had three successful referenda imposing a capital project sales tax, the original on November 8, 2008, the first reimposition on November 4, 2014 ('Sales Tax 2') and a second reimposition on November 3, 2020 ('Sales Tax 3')." We understand you "are seeking guidance on the manner in which the County may expend excess revenue from Sales Tax 2 as authorized in Section 4-10-340(C)(2) of the Code of Laws of South Carolina 1976, as amended (the "Code")" Specifically, you ask

whether the excess revenue from Sales Tax 2 can be added to the amount of sales tax revenue identified for the first project (the "Detention Center") contained in the ordinance imposing Sales Tax 3. The County's analysis to date is that the statute does not specifically identify the manner in which the excess revenue may be used. The statute clearly indicates that excess revenues should be used in priority as projects appear in the ordinance imposing Sales Tax 3. The County believes that it would be in compliance with Section 4-10-340(C)(2) of the Code by adding the excess amount from Sales Tax 2 to the amount for the Detention Center in Sales Tax 3. The amount set aside for the Detention Center in Sales Tax 3 is not the full amount needed to complete the project. By using the excess revenue from Sales Tax 2, the County would be much closer to fully funding and completing the Detention Center.

If the excess revenue from Sales Tax 2 is used to supplant or used in place of Sales Tax 3 revenue, it is likely there will be funds remaining at the end of Sales Tax 3. The County would suggest that for good planning purposes, it is in the County's best interest to not have significant funds remaining at the conclusion of a sales tax.

Law/Analysis

Capital Project Sales Tax Act (the “Act”) is contained in chapter 10 of title 4 of the South Carolina Code (2021). The Act allows for the imposition of “a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time.” S.C. Code Ann. §4-10-310 (2021). According to section 4-10-330 of the South Carolina Code (2021), the ordinance must specify the purposes for which the proceeds from the tax are to be used and what types of projects are allowed. Section 4-10-340 of the South Carolina Code (2021) governs the timing of the imposition of the tax and its termination. Subsection (C) of this provision, which is the subject of your opinion request, explains how excess funds should be allocated and states as follows:

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4-10-330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

S.C. Code Ann. § 4-10-340(C).

In your letter, you ask us to determine whether the excess revenue from the imposition of Sales Tax 2 can be added to the allocated revenue from the imposition of Sales Tax 3 to fund the first project identified in the ordinance imposing Sales Tax 3. To make this determination, we turn to the rules of statutory construction, the primary of which is to ascertain the intent of the Legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). A statute’s language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself. Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id.

State v. Gaines, 380 S.C. 23, 32-33, 667 S.E.2d 728, 733 (2008).

In State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013) our Supreme Court interpreted section 4-10-340. The Court determined section 4-10-340(C) “expressly applies only when a county collects revenue in excess of the funds necessary to complete the projects approved in that referendum.” Id. at 178, 749 S.E.2d at 520. The Court also found the term “remaining funds” “refers to excess funds raised by the original tax, not to funds raised by the reimposition, and the subsection plainly requires those excess funds be applied towards projects identified in the reimposition referendum.” Id. In accordance with the Supreme Court’s interpretation, we understand the funds at issue are “remaining funds” from the imposition of Sales Tax 2 because the County collected revenue in excess of the funds necessary to complete the projects listed in the ordinance imposing Sales Tax 2. Therefore section 4-10-340(C) governs the distribution of these remaining funds. In accordance with section 4-10-340(C), because the County reimposed the tax, these funds “must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.” In your letter, you stated the Detention Center is the first project in the enacting ordinance for Sales Tax 3. Therefore, we believe the remaining funds from Sales Tax 2 must be used for the Sales Tax 3 projects, starting with the Detention Center. However, this determination does not end our inquiry as you also ask whether the remaining funds may be added to the stated cost of the Detention Center in the Sales Tax 3 ordinance.

We did not find a provision in the Act that specifically limits the funding of a particular project to the amount stated in the ordinance. In fact, section 4-10-340(C)(1) indicates otherwise as it states excess funds should first be used to complete the projects for which the tax was imposed. Assuming such projects are complete, section 4-10-340(C)(2) requires funds from a prior imposition to be used for current projects. By including this requirement, we presume the Legislature wants to insure the projects listed in the current imposition are given priority.¹ Allowing excess funds from a prior imposition to be used in addition current funds would likely further this goal. Moreover, reading section 4-1-340(C)(2) to require excess funds be used to replace current revenue would create an absurd result. As you mentioned in your letter, if the excess revenue from Sales Tax 2 supplants the revenue from Sales Tax 3, the first project on the list for Sales Tax 3 may go unfinished while excess funds from Sales Tax 3 remain. “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). As such, we believe the better reading of section 4-10-340(C)(2) is to allow the excess funds from Sales Tax 2 to be used for Sales Tax 3 projects in the order of their priority and in addition to the anticipated revenues resulting from the imposition of Sales Tax 3.

¹ Our Supreme Court previously determined section 4-10-340 does require the completion of projects listed on prior impositions. Florence County, 406 S.C. at 180, 749 S.E.2d at 522.

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You also brought to our attention that the 2021-22 South Carolina State Budget includes the following proviso:

113.9. (AS-TREAS: Excess Sales Tax Collections) In the current fiscal year, if a county has capital projects sales tax collections in excess of the amount necessary to complete all projects for which the tax was imposed and the tax has not yet expired, the county may pledge and use the excess collections to fund road improvements, intersection improvements, and pedestrian transportation. However, prior to the expiration of the tax, an eligible county must adopt an ordinance specifying the purposes for which the excess funds will be used. A county may expend distributions received pursuant to the Aid to Subdivisions, State Treasurer section to meet the requirements of this provision.

(emphasis added). We believe this proviso further supports our understanding of the Legislature's intent to fully fund those projects listed in the ordinance prior to using excess funds for other purposes not listed. As such, we are of the opinion that excess revenue from Sales Tax 2 may be used in addition to current funding from Sales Tax 3 to complete the projects listed in the Sales Tax 3 ordinance.

Conclusion

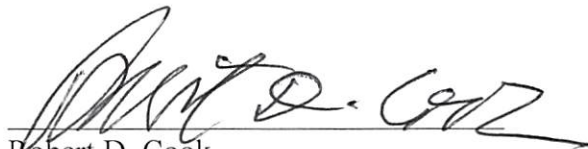
As explained above, we are of the opinion that the Legislature intended for excess revenue from a prior sales tax imposition be used first and foremost for current projects. Therefore, we believe section 4-10-340(C) allows for excess revenue from Sales Tax 2 to be used for the projects listed in the ordinance imposing Sales Tax 3 in the order listed and in addition to the amounts listed, should such funds be needed to complete the projects.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General