Alan Wilson
Attorney General

September 21, 2026

John Edward Robinson, Esquire
36 Broad Street
Charleston, SC 29401

Dear Mr. Robinson:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. On behalf of the Charleston County Board of Voter Registration and Elections, you seek an opinion regarding the statutory public hearing requirements for a proposed 2026 tax referendum. You advise that Charleston County Council has decided to pursue a sales and use tax to fund specific transportation projects as authorized by Title 4, Chapter 37 of the Code of Laws of South Carolina. As required by Section 4-37-30 of that Chapter, Charleston County Council passed an ordinance imposing the sales and use tax, subject to a referendum. You ask several questions concerning a public hearing required by a portion of the statute including which entity is responsible for conducting the hearing as well as the scope and timing of the hearing.

Law/Analysis

Chapter 37 of Title 4 provides optional methods for counties to finance transportation facilities. S.C. Code Ann. § 4-37-10 through 4-37-60 (2021 & Supp. 2025). Section 4-37-30 allows a county to impose either tolls or a sales and use tax of no more than one percent to generate revenue for transportation projects. § 4-37-30 (2021 & Supp. 2025). These methods are mutually exclusive and before either method may be implemented, county council must pass an ordinance to use that method and a favorable referendum must be held. § 4-37-30(A)(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."); § 4-37-30(B)(1)(a)-(b) (county can use tolls by passing ordinance subject to referendum). You advise that Charleston County Council has chosen to pursue the sales and use tax and has passed an ordinance to impose the sales and use tax, subject to a referendum.

The public hearing in question is discussed in Subsection (A)(2) of Section 4-37-30 which discusses what happens after the county election commission receives the ordinance. Subsection (A)(2) reads:

> Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the

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> jurisdiction. A referendum for the initial imposition of the sales and use tax within a county pursuant to this chapter and all subsequent referendums to impose, extend, or renew the tax must be held at the time of the general election. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the jurisdiction. <u>A public hearing must be conducted at least fourteen days before the referendum after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.</u>

§ 4-37-30(A)(2) (2021) (emphasis added).

Other parts of Subsection (A) include the sample referendum ballot, the process to extend an approved sales and use tax, the operation of the tax and the revenue it generates, and the termination of the tax. § 4-37-30(A)(3) (sample ballot), (A)(4) (extensions), (A)(5) (termination), (A)(6) (necessity to describe the projects), (A)(7) through (A)(17) (operation of the tax).

The cardinal rule of statutory construction is to determine and give effect to the legislature's intent. <u>Spring Valley Ints. v. Best for Last, LLC</u>, 447 S.C. 263, 267, 926 S.E.2d 218, 220 (2026). In doing so, the language of the statute should be considered as a whole rather than merely focusing on individual passages or provisions. <u>Mid-State Auto Auction of Lexington, Inc. v. Altman</u>, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Furthermore, the statute's plain language serves as the best evidence of the legislature's intent. <u>Perry v. Bullock</u>, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). Finally, the canon of "*expressio unius est exclusio alterius*" or "*inclusio unius est exclusio alterius*" provides that " 'to express or include one thing implies the exclusion of another or of the alternative.' " <u>Riverwoods, LLC v. Cnty of Charleston</u>, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) (quoting <u>Hodges v. Rainey</u>, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)).

You first ask which body is required to hold the public hearing and whether the public hearings held by county council in the process of passing the ordinance will satisfy this requirement. Reading the statute as a whole, we believe Subsection (A)(2) can fairly be read to cover events that must occur after the ordinance passed by county council is received by the county election commission. By this time in the process, county council has already chosen to impose the tax and passed the necessary ordinance. Subsection (A)(2), in our view, is designed to assign responsibility to hold the public referendum and to ensure the public is given proper notice of the referendum. It explicitly requires the county election commission to publish notice of the referendum's date and purpose once a week for four weeks before the referendum is held and to conduct the referendum. The subsection also requires a public hearing be held at least fourteen days before the date of the referendum as well as published notice of that public hearing, but does not assign those tasks to any specific body. Notably, this is the only public hearing required by the statute with respect to the sales and use tax. It is our opinion that the public hearing must occur after the ordinance has passed and is received by the county election commission. This requirement is independent of any public hearing held during county council's consideration of the ordinance and appears to be designed to alert the public of the upcoming referendum. We do not believe any public hearing held before the ordinance was passed satisfies the statute.

The body required to hold the public hearing is less clear. Subsection (A)(2) states a public hearing must be noticed and held, but does not assign either of these tasks to the county election commission or to any other body. One might argue that by this time in the process county council has already deliberated on and passed the ordinance and thus has completed its work. Such an argument might be that once the ordinance is passed it is up to the county election commission to shepherd the proposal through the referendum. Indeed, the county election commission is expressly required to publish notices of the referendum and to conduct the referendum. It is our understanding the South Carolina Association of Counties has interpreted the statute to assign the responsibility for the public hearing to the county election commission based primarily on the statute's organization. While this may have been what the General Assembly intended, we view it differently. Following the cannon of "expressio unius est exclusio alterius," we believe by expressly assigning other specific tasks to the county election commission, the General Assembly indicated it did not intend to assign the public hearing to the county election commission. Additionally, holding a public hearing on an upcoming tax referendum is well outside a county election commission's typical activities such as holding elections and handling related issues including provisional ballots, election certifications, election audits, and election protests. Because the statute does not specify which body is required to hold the public hearing, we are of the opinion that either body could do so, but that county council is better suited to the task. As the body seeking to impose the tax, county council has a better understanding of the transportation projects the tax is designed to fund and, unlike election commission, has a distinct incentive to persuade the electors to vote in favor of the tax. The General Assembly can certainly amend the statute to clarify the body it wishes to hold the public hearing. Until that clarification can be obtained, it is our opinion that the statute requires the public hearing be held and the propriety of the referendum does not depend on which body conducts the hearing, but county council is the better choice.

You also ask about the public hearing's scope and purpose. As we have previously stated, Subsection (A)(2) is directed at ensuring the referendum occurs and that the public be provided with adequate advance notice of the referendum. The public hearing is part of that notice requirement. As to the public hearing's scope, unlike other statutes mandating public hearings, Section 4-37-30 does not require interested parties or members of the public be given an opportunity to be heard. While an opportunity to be heard is not required, it is also not prohibited. If county council chooses to hold the public hearing, doing so will not only satisfy the statutory requirement, but it will also serve as an opportunity to persuade electors to vote in favor of the tax.

Conclusion

It is the opinion of this office that the public hearing required by Section 4-37-30(A)(2) can be held by either the county election commission or county council, but that the statute does not assign the task to the county election commission and county council is better suited to complete the task. Further, it is our opinion that the public hearing must be held after the ordinance is received by the county election commission. For this reason, we do not believe any public hearings held during county council's consideration of the ordinance will suffice. Instead, the public hearing is designed to provide the public an opportunity to learn about the referendum and its purpose. The public hearing does not have to include an opportunity for the public to be heard as the electors will have their opportunity to be heard at the ballot box.

Sincerely,

Sabrina C. Todd

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Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

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