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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 2, 1999

F. Lee Prickett, Jr., Esquire
Calhoun County Attorney
Courthouse Annex, Suite 108
St. Matthews, South Carolina 29135

RE: Informal Opinion

Dear Mr. Prickett:

Your opinion request has been forwarded to me for reply. You have informed this Office of the following:

> In 1996, Calhoun County and Eastman Chemical Company ("Eastman") entered into a Lease Purchase Agreement dated as of December 1, 1996 (the "Lease Agreement") in order to induce Eastman to expand its existing facilities in the County in an amount exceeding $200,000.00. SC Code §4-12-30 authorizes such an arrangement for qualifying investors. Pursuant to Section 6.3 of the lease Agreement, Eastman agreed to make payments in lieu of taxes ("Payments in Lieu of taxes") with respect to its project. [T]he amount of the annual Payments in Lieu of Taxes is determined and calculated using a 4% assessment ratio and a millage rate of 216 mils. Eastman is entitled to a 25% offset of each year's Payments in Lieu of Taxes as a reimbursement for infrastructure expenditures. SC Code §4-12-30(K)(3) authorizes such an offset.
>
> The Calhoun County School District ("the District") would like to build a new elementary school in Calhoun County. The District cannot issue general obligation bonds in an amount necessary to construct the school

> without the approval of the citizens through a referendum due to the Constitutional debt limit of 8%. The district would like to avoid the time and expense of a referendum. The District would like to use the revenue stream from its share of the Payment in Lieu of Taxes to build the new school. The District has requested that Calhoun County Council assist the District in providing financing for the construction of a new school building in Calhoun County by placing the planned expansion into a multi-county industrial park and having the County issue a Special Source Revenue Bond for the school from the fees received and retained by the County from the multi-county industrial park. The money raised by the Special Source Revenue Bond would then be granted to the District by the County for construction of the new school building. The split in revenue would be adjusted so that the County receives the District's share of the income from the Payment in Lieu of Taxes in an amount sufficient to repay the bonds.

On behalf of the Calhoun County Council, you have asked four questions based on the above stated information. In this Opinion, I will only address question number 1 as I feel the answer to question 1 obviates the need to answer the remaining questions.

Question number 1 reads as follows:

> Does South Carolina law authorize the County Council to issue a Special Source Revenue Bond for the purposes of construction of a school? More specifically, <u>SC Code</u> §4-29-68 authorizes a county, municipality, or special purpose district which receives and retains revenue from fees to issue Special Source Revenue Bonds to finance "infrastructure serving the issuer ... in order to enhance the economic development of the issuer...".
>
> Is this language broad enough to allow the County to undertake financing as proposed by the School District?

Your question is based on Section 4-29-68 of the South Carolina Code of Laws. As this Section is quite extensive, I will not repeat it in its entirety. Instead, I will only cite those portions of the statute which are of particular relevance to your question. Section 4-29-68 provides in pertinent part as follows:

> (A) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4-29-

> 60, Section 4-29-67, Section 4-12-20, or Section 4-12-30 may issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to the following terms and conditions:
>
> > (2) the bonds are issued solely for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the issuer and for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the issuer and costs of issuance of the bonds. Bonds issued pursuant to this section to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property.

In interpreting a statute, legislative intent must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expounding the statute's operation. In other words, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948); Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1947).

Applying the above stated rules of construction to Section 4-29-68, I am able to reach one conclusion: the statute lends itself to more than one interpretation. It would appear the most appropriate interpretation of the statute is that the General Assembly did not intend the special source revenue bonds be used to finance projects such as the construction of new schools. In reaching this result, I share the same concerns as those stated in a letter to you from Thomas A. Hutcheson, Esquire, dated June 23, 1998. As we are both familiar with Mr. Hutcheson excellent analysis, I find it unnecessary to repeat it here.

There may be some merit to another interpretation of the statute. It may be possible to argue that the term "infrastructure" found in Section 4-29-68(A)(2) should be read to include schools. However, I have been unable to locate any cases or prior opinions on this subject and, therefore, support for such an interpretation would have to rely heavily on the definition of "infrastructure" found in Webster's New World Dictionary 723 (2nd college ed. 1978). There, infrastructure is defined as "a substructure or underlying foundation; esp., the basic installations and facilities on which the continuance and growth of a community, state, etc. depend, as roads, schools, power plants, transportation and communication systems, etc."[1] I am not convinced that this is a strong argument as the statute as a whole supports the conclusion reached in the preceding paragraph.

As you can see, I am unable to provide you with a clear answer to your question. In the absence of a clear answer, consideration might be given to filing a declaratory judgment action to resolve your questions with absolute finality.

Finally, you state in your letter that the School District cannot issue general obligation bonds in an amount necessary to construct the school without the approval of the citizens through a referendum due to the Constitutional debt limit of 8%. You further state that the School District would like to avoid the time and expense of a referendum. While the School District's desire to avoid expenditures is admirable, this Office strongly supports the idea of letting the people decide key issues and I take this opportunity to reiterate that support.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

Paul M. Koch

Paul M. Koch
Assistant Attorney General

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[1] I note that other dictionary definitions of the term "infrastructure" do not specifically include schools. See The American Heritage College Dictionary.