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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

August 8, 2005

The Honorable Clementa Pinckney
Member, South Carolina Senate
613 Gressette Building
P. O. Box 142
Columbia, SC 29202

Dear Senator Pinckney:

You have requested an opinion concerning "the legality of issuance of special source revenue bonds by Jasper County." By way of background, you state the following:

> [t]he Jasper County School District has made a request to Jasper County Council to assist the School District with the funding of a portion of the cost of new school facilities, including two new schools. The School District planned to finance the two new schools with $46 million of general obligation bonds which were approved by the voters in a referendum in September 2001. Because of delays brought about by litigation (which has since been resolved) and cost increases resulting from the delay, as well as additional State Department of Education requirements, the anticipated costs now exceed the amount of general obligation bond approved in the Referendum by about $18 million.
>
> The School District still plans to finance most of the costs of these schools with general obligation bonds as approved by the voters. To make up the shortfall, the School District is accessing other funding sources. In addition to those sources, the School District has requested Jasper County Council's assistance in funding $11 million of the shortfall. SCANA owns a large new power plant that has just recently became operational (and therefore subject to property taxes). As an incentive to have the plant built in Jasper County, the County negotiated a fee-in-lieu of taxes arrangement ("FILOT") with SCANA. As a result of this agreement, SCANA is scheduled to make substantial FILOT payments with regard to the plant, including a portion which, by agreement is allocated to the School District for school purposes.
>
> Pursuant to S.C.Code Sections 4-1-175 and 4-29-68 counties (but not school districts) may issue special source revenue bonds payable solely from FILOT payments received by the county. Special source revenue bond proceeds may be used

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> to fund the costs of infrastructure that serves the economic development of the county. The Jasper County School Board has requested that County Council issue approximately $11 million of special source revenue bonds payable solely from the School District's portion of the FILOT payments to be made by SCANA. County Council has determined that the construction of these schools will serve the economic development of Jasper County, and has agreed to issue the bonds, subject to the approval of the Budget and Control Board under Section 4-29-140.
>
> This letter is to request an opinion from your office that Jasper may legally issue the special source revenue bonds for this purpose.

Law / Analysis

It is first instructive to note that in recent years – since the advent of Home Rule – the autonomy and authority of counties has increased significantly. Pursuant to Art. VIII, § 17 of the South Carolina Constitution, it is provided that

> [t]he provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

In accordance with this constitutional mandate, the General Assembly has enacted S.C. Code Ann. § 4-9-25, which states the following:

> [a]ll counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including th exercise of these powers in relation to health and order in counties *or respecting any subject as appears to them necessary and proper for the scrutiny, general welfare, and convenience of counties or for preserving health, peace, order and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.*

(emphasis added).

Our Supreme Court has recognized in its decisions these Home Rule provisions requiring that local governments be given a certain degree of autonomy under Home Rule. For example, in *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802 (1993) the Court concluded that "... by enacting the Home Rule Act ... the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government." Dillon's

Rule has long provided that a municipal corporation possesses only such powers as expressly granted, and those necessarily or fairly implied therefrom, as well as those powers "'essential to the accomplishment of the declared objects and purposes of the corporation ....'" *Id.* at 421. In *Williams*, however, the Court concluded that Article VIII (relating to Home Rule), as well as the Home Rule Act "... bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State." *Id.* at 422.

Although *Williams'* abrogation of Dillon's Rule concerned municipalities, in *Op. S.C. Atty. Gen.*, January 19, 1995, we concluded that the holding of *Williams* was also likely applicable to county governments as well. There, we noted that "[w]hile *Williams* did not address county government vis à vis Dillon's Rule, *Williams* would certainly be of great precedential value in arguing that Dillon's Rule has [also] been abolished as to county governments." Moreover, in *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003), the Supreme Court clearly recognized that counties possess general police powers in the wake of Home Rule. There, the Court concluded that

> [i]n the instant case, while the Comprehensive Planning Act governs zoning, it simply does not evince a legislative intent to completely prohibit any other local enactments from touching upon zoning or land use .... That fact, in conjunction with the liberal reading we are required to give section 4-9-25, compels us to conclude that this type of ordinance [regulating sexually oriented businesses] may be properly enacted pursuant to the County 's police powers.

353 S.C. at 165.

With that background in mind, we turn now to your specific question of whether Jasper County may issue special source revenue bonds to assist in funding the construction of schools in Jasper County. S.C. Code Ann. Section 4-29-68 provides that a county "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" pursuant to certain terms and conditions. Subsection (2) further states in pertinent part that one such condition which must be met is that

> ... (2) [t]he bonds are issued solely for 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.

Section 4-1-175 also provides that "[a] county or municipality receiving revenues from a payment in lieu of taxes pursuant to Section 13 of Article VIII of the Constitution of this State may issue special source revenue bonds secured by and payable from all or a part of that portion of the revenues which the county is entitled to retain pursuant to the agreement required by Section 4-1-170 in the manner and for the purposes set forth in Section 4-29-68." Thus, the issue here is whether § 4-29-68 authorizes special source revenue bonds to be issued by Jasper County to assist the School District in funding the new school facilities. In other words, the question is whether school facilities constitute "infrastructure serving the issuer" (Jasper County) for the purposes of § 4-29-68.

Several principles of statutory construction are relevant to this inquiry. First and foremost, is the cardinal rule of statutory interpretation, which is to ascertain and effectuate the legislative intent, whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such language must be construed in light of the statute's intended purpose. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). Moreover, a statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Hay v. S.C. Tax Comm.*, 273 S.C. 269, 255 S.E.2d 837 (1979). In construing statutes, the words must be given their plain and ordinary meaning without resort to a subtle or forced construction for the purpose of limiting or expanding their operation. *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). And, as noted, § 4-9-25 reinforces Art. VIII, § 17 of the Constitution, by requiring that the "powers of the counties must be liberally construed in favor of the county ...."

In construing a statute, when faced with an undefined statutory term, the court must interpret the term in accordance with its usual and customary meaning. *State v. Morgan, supra*. Where the words of a statute are sufficiently broad to encompass objects other than those obviously contemplated, the court will include those additional objects. *United States Tire Co. v. Keystone Tire Sales, Co.*, 153 S.C. 56, 150 S.E. 347 (1929). Dictionary definitions may be consulted. *Indenbaum v. Mich. Bd. Med.*, 213 Mich. App. 263, 539 N.W.2d 574 (1995). *See also, S.C. Pipeline Corp. v. Lone Star Steel Co.*, 345 S.C. 151, 546 S.E.2d 564 (2001).

The Legislature, in amending and enacting a law, is presumed to use words of current, contemporary meaning. *Town Court et al. v. Miller*, 83 Misc.2d 118, 373 N.Y.S.2d 312 (1975). Where the meaning of words in a statute have evolved, the court will ascribe to the statute the contemporary meaning. *Koohi v. U.S.*, 976 F.2d 1328 (9th Cir. 1992) [court construed phrase "time of war" not to require Congressional declaration of war; phrase had acquired a broader meaning]; *S.C. Pipeline Corp., supra* [Supreme Court of South Carolina applied "contemporary definitions of 'improvement.'"]. Of course, the Court will reject a meaning – even though the ordinary meaning – if such meaning would defeat the plain legislative intention. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005).

Applying the common and ordinary definition – as we must here – it is clear that the term "infrastructure" includes schools. It is recognized by one authority that the word "infrastructure" is defined as follows:

> a substructure or unyielding 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.

Webster's New World Dictionary of the American Language (Second College Edition) (emphasis added). Likewise, the definition of "infrastructure" in the *American Heritage Dictionary of the English Language* (4th ed.) has been updated to reflect that "schools" are included within the term. Moreover, the latest edition of *Black's Law Dictionary* defines the term "infrastructure" as

> [t]he underlying framework of a system; esp. public services and facilities (such as highways, *schools*, bridges, sewers and water systems) needed to support commerce as well as economic and residential development.

Black's Law Dictionary (8th ed.) (emphasis added).

On line dictionaries also define the word similarly, to include schools. Dictionary.com defines "infrastructure" as

> [t]he basic facilities, services and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including *schools*, post offices, and prisons. (emphasis added).

Likewise, the Encarta World English Dictionary (North American Edition) states that "infrastructure" is

> The large-scale public systems, services, and facilities of a country or region that are necessary for economic activity, including power and water supplies, public transportation, telecommunications, roads and *schools*.

www.encarta.msn.com. (emphasis added).

It should also be noted that the *American Heritage Dictionary of the English Language* (4th ed.), published by Houghton Mifflin Company, not only includes schools as examples of infrastructure, but states that "[t]he term infrastructure has been used since 1927 to refer collectively to the roads, bridges, rail lines, and similar public works that are required for an industrial economy, or a portion of it, to function." *See, Usage Note* in *American Heritage Dictionary, supra.* Thus, it is at least arguable that schools were encompassed within the definition of "infrastructure" from the

time of the word's origin. However, in any event, schools are clearly embraced within the meaning of the word as of today.

In addition, recent case law consistently recognizes that schools are an integral part of a community's "infrastructure." For example, in *Barbara Beach - Courchesne et al. v. City of Diamond Bar*, 80 Cal. App. 4th 388, 95 Cal. Reptr. 2d 265 (2000), the Court characterized "urban infrastructures" as including "public water supply, sewer, fire, schools and attendant facilities." In *C.F.T. Development LLC v. Bd. of County Commrs. of Torrence Co.*, 130 N.M. 775, 32 (P.3d 784 (2001), the Court sustained the decision of the county commissioners to deny plat approval because of potential impact of the proposed subdivision upon "the infrastructure and public resources of the County including schools." And, in *Rogers Machinery, Inc. v. Washington Co., et al.*, 181 Or. App. 369, 45 P.2d 966 (2002), the Court upheld the constitutionality of an impact fee for infrastructure, which the Court concluded was "roads, parks, and schools," Other authorities are in accord. *See, Lonegan et al. v. State of N.J., et al.*, 176 N.J. 2, 819 A.2d 395 (2003) [construction of schools, transportation systems, and "other public infrastructure."]; *Gregory, et al. v. Bd. of Supervisors of Chesterfield Co.*, 257 Va. 530, 514 S.E. 2d 350 (1999) [court describes "infrastructure improvements" of the County to include "schools, roads, parks, libraries, and fire stations."]; *City of Bowie v. Prince George's Co., et al.*, 384 Md. 413, 863 A.2d 976 (2004) [land development case in which the approval of the preliminary plats was challenged, at which stage "the adequacy of roads, schools, and other infrastructure facilities must be considered ...."]; *St. John's, Florida et al. v. Northeast Florida Builders Assoc., Inc., et al.*, 583 So.2d 635 (1991) [upholding impact fees to finance additional infrastructure required to serve new growth, including new facilities]. As the Tenth Circuit Court of Appeals recognized in *Pittsburg and Midway Coal Mining Co. v. Watchman, et al.*, 52 F.3d 1531, 1544 (10th Cir. 1995),

> [t]he common and ordinary meaning of community, however, connotes something more than a purely economic concern. A community is a mini-society consisting of personal residences and an infrastructure potentially including religious and cultural institutions, *schools*, emergency services, public utilities, groceries, shops, restaurants, and the other needs, necessities, and wants of modern life.

(emphasis added).

No South Carolina case of which we are aware has attempted to construe § 4-29-68 or to define the term "infrastructure." Several state statutes define the term in the specific context of that particular statute. *See, e.g.*, § 11-42-10 *et seq.* [S.C. Comprehensive Infrastructure Development Act]; § 11-40-10 *et seq.* [S.C. Comprehensive Infrastructure Facilities Authority Act); § 11-41-10 *et seq.* [State General Obligation Economic Development Act]. However, these statutes all relate to a specific purpose and may not be used to limit § 4-29-68's use of the term "infrastructure," particularly in view of the fact that such provision must be liberally construed pursuant to § 4-9-25. *See, Clemson Univ. v. Speth*, 344 S.C. 310, 543 S.E.2d 572 (Ct. App. 2001) [definitions used in other

Acts may not be incorporated in Act where same term is undefined, absent clear legislative intent to do so].

Therefore, in view of the absence of a specific definition of "infrastructure" contained in § 4-29-68, we must apply the common and ordinary definition of the term according to its most current usage. See, *Op. S.C. Atty. Gen.*, August 4, 2004 [Unless otherwise defined, words used in a statute will be interpreted according to their ordinary, *contemporary*, common meaning.] Thus, we are of the opinion that a court would construe the term "infrastructure serving the issuer" as used in the statute, as permitting the inclusion the schools of Jasper County.

Such a reading of the statute is, we believe, in accord with the statutory purpose. As we noted in *Op. S.C. Atty. Gen., Op. No.* 93-81 (December 10, 1993), § 4-29-68 must not be construed in a literal sense or in isolation, but with the Legislature's purpose in mind – i.e., the "promotion of economic development ...." Section 4-29-68 was originally enacted in 1992 (Act No. 361 of 1992), and was passed close on the heels of the Legislature's efforts in 1988 to provide "an alternative method of paying the fee in lieu of taxes for industries investing at least $85 million." *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990) [upholding as constitutional a 1988 amendment to the Industrial Revenue Bond Act allowing a negotiated fee in lieu of taxes for projects involving initial investment of at least $85 million]. Thus, § 4-29-68 and other statutes like it [e.g. § 4-1-175; § 4-29-67; § 4-29-60, etc.] must be seen as part of a larger package of legislative efforts to spur economic growth in the State and must be so construed. *See, Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) ["We expressly hold that industrial development is a valid public purpose ...."]; *Ed Robinson Laundry and Dry Cleaning, Inc. v. S.C. Dept. of Revenue*, 356 S.C. 120, 588 S.E.2d 97, 100 (2003) [recognizing "... the legitimate governmental interests of fostering economic development in a particular segment of the economy."] Accordingly, coupled with our obligation to construe the power of counties broadly under Home Rule, we deem the fact that § 4-29-68 seeks to promote the Legislature's desire to "enhance the economic development of the [county] issuer ...," as reflective of the General Assembly's intent to give the term "infrastructure" as used in § 4-29-68 its well understood broad meaning encompasses schools. Jasper County's contribution to the construction of schools in Jasper County, would, in other words, reasonably be included within the statute's terminology.

It should also be noted that § 4-29-68 (A)(2) uses the phrase infrastructure "serving the issuer." The Legislature could easily have said infrastructure "of the issuer" or a similar phraseology if it had intended that only the county's *owned* infrastructure were intended. The desire of the Legislature was clearly that any infrastructure "serving" the County which would "enhance the economic development" of the County was intended within the scope of § 4-29-68. As noted above, quality schools enhance the economic development of the county just as surely as water and sewer plants, communications and transportation systems and other infrastructures do. *See*, § 4-29-68 (A)(4)(2) [issuer may use proceeds of the bonds to make loans or grants or to participate in joint undertakings with other agencies or political subdivisions]. Thus, it is, in our view, reasonable for Jasper County to use special source revenue bonds for the purposes outlined in your letter.

In this same regard, our Supreme Court has concluded on a number of occasions that it is lawful for cities and municipalities to issue bonds or spend county funds to support the school district or districts in the county or to assist the county's schools. *See, Grey v. Vaigneur*, 243 S.C. 604, 135 S.E.2d 229 (1954) [South Carolina Constitution permits Jasper County to issue bonds to assist a coextensive school district in construction of public school facilities]; *Allen v. Adams*, 66 S.C. 344, 44 S.E. 938 (1903) [municipality possesses power to issue bonds for the erection of a schoolhouse within the municipality, even though the school is controlled by the usual school authorities]; *Smith v. Robertson*, 210 S.C. 99, 41 S.E.2d 631 (1947) [Court upheld Charleston County's issuance of bonds to purchase a site to construct the South Carolina Medical College]; *Shelor v. Pace*, 151 S.C. 99, 148 S.E. 726 (1929) [Court upheld Oconee County's issuance of bonds for school purposes]; *Stackhouse v. Floyd*, 248 S.C. 183, 149 S.E.2d 437 [Court upheld Dillon County's issuance of bonds for school district]. While these cases, of course, did not involve an interpretation of § 4-29-68, they each stand for the proposition that it is within the corporate purpose of a county or municipality to expend funds for the support of schools within that county or town. These decisions clearly support Jasper County's interpretation of the term "infrastructure serving the issuer ..." pursuant to § 4-29-68.

Grey and *Allen* are particularly instructive here. In *Grey*, just as in this instance, Jasper County had proposed a school improvement program. Because of the constitutional debt limitation, the School District of Jasper could raise only a limited amount of the needed funds. Thus, the General Assembly authorized Jasper County to sell bonds and turn the proceeds over to the School District. The statute was attacked on constitutional grounds, on the basis that the law authorized the expenditure of funds by the County through the sale of bonds for a purpose not a corporate or county purpose within the meaning of the State Constitution.

However, the Court rejected this argument. The legislation was upheld as valid. In the Court's view, since the County and the School District "are coextensive, the result of the school improvement program will be to equalize educational opportunities in the district and the county. *Certainly, the county has an interest in providing for the education of its citizens.*" 135 S.E.2d at 232. (emphasis added).

The *Grey* Court cited with approval *Allen v. Adams, supra.* In *Allen*, the Court found that the issuance of bonds by the Town of Edgefield for the erection of a schoolhouse was within the municipality's corporate purpose. The Court's reasoning with respect to the Town of Edgefield is likewise applicable to the County of Jasper:

> [f]rom the foregoing statement as to the chartered powers of the town of Edgefield, there is no room for doubt that the erection of a school building within the corporate limits is a corporate purpose. It is expressly declared to be a corporate purpose. That being the case, it is needless to inquire whether such is a public purpose; but a very slight consideration of the purposes of a school building within a town, in the discipline and training of the youth of the community, in promoting an intelligent

> citizenship, in attracting to the town a desirable class of people, who build homes and enter into business in the town, in the tendency to create or enhance taxable property, and other important public considerations, which readily occur to the mind as supporting the erection of a school building in convenient reach of the community, will demonstrate that such a purpose is a public one, and in a very high degree.

44 S.E. at 941-942.

We have also cited in our opinions cases such as *Grey, supra* in support of the principle that the promotion of education in the county is within that county's corporate purpose. For example, we concluded in an opinion, dated September 20, 1976, that Oconee County could incur bonded indebtedness for the benefit of schools within the county. In *Op. S.C. Atty. Gen.*, April 11, 1967, we commented that "counties may clearly undertake the construction of schools ...." Moreover, in *Op. S.C. Atty. Gen.*, October 30, 1984, we quoted *Stackhouse* to the effect that "'... a county may give assistance to a school district from a county-wide tax levy and/or by the issuance of county bonds." And, in *Op. S.C. Atty. Gen.*, Op. No. 83-61 (August 18, 1983) relying upon *Stone v. Traynham*, we recognized the close connection between the county and the schools within that county, advising that the Calhoun County Council possessed authority to determine by ordinance the method of establishing the school tax millage when the General Assembly had failed to do so. In the latter opinion, we relied also upon Art. VIII, § 17 of the Constitution requiring the powers of the county to be construed broadly. *See also, Op. S.C. Atty. Gen.*, Op. No. 85-5 (January 21, 1985) [Richland County may use county funds to contribute to a proposed performing arts center as education is within the corporate purpose of the County]; *Op. S.C. Atty. Gen.*, January 30, 1978 [Fairfield County Council authorized to transfer surplus general county funds to the Fairfield County Board of Education for the latter's use in school matters].

We acknowledge, of course, that valid arguments may be made that the term "infrastructure" was intended to be used here in a more traditional sense, such as for water and sewer, roads and bridges, etc. Although our opinion, dated February 2, 1999 appears at first glance to reach this conclusion, in reality, it does not. In that opinion, we commented with respect to § 4-29-68's use of the term "infrastructure serving the issuer ... in order to enhance the economic development of the issuer ..." and whether such phrase authorized Calhoun County to use Special Source Revenue Bonds to assist the School District in building a new elementary school. We referenced dictionary definitions of the term "infrastructure," noting that some definitions included schools, while others did not. The opinion also acknowledged that "[t]here may be some merit to another interpretation of the statute" other than that submitted by a bond attorney who had construed § 4-29-68 as not authorizing use of a county's special source bond proceeds for school construction. In essence, we were of the view that § 4-29-68 "lends itself to more than one interpretation ...." The author of the opinion advised that "I am unable to provide you with a clear answer to your question" and recommended a declaratory judgement to resolve the issue. Thus, the 1999 opinion, in reality, did not reach a definitive conclusion.

This opinion was written more than five years ago. Since that time, the concept of "infrastructure" has continued to evolve to the point that, as one scholar has noted, the idea of infrastructure "... now embraces fiber optic highways as well as those of concrete and asphalt." Cresswell, Georgia Courts on the 21st Century," 53 *Mercer L. Rev.* 1, 15 (Fall, 2001). The fact that the earlier opinion freely acknowledged that more than one interpretation was then possible, and that a definitive conclusion could not then be rendered by this Office is a clear recognition that the concept of "infrastructure" was then and is even today in a state of evolution. However, based upon the authorities referenced above, particularly the now apparent consistency of current definitions to include schools as part of a community's infrastructure, we believe a court would readily conclude that the construction of schools is encompassed within the meaning of infrastructure as used in § 4-29-68.

In our view, any ambiguity contained in § 4-29-68 must be resolved in favor of the County in accordance with Art. VIII, § 17 and § 4-9-25's mandate to construe the powers of a county liberally. This is particularly so when our Supreme Court has, for decades, viewed the assistance of public schools within a county or municipality as within the corporate purpose of those political subdivisions. As the Court stated in *Grey*, "[c]ertainly, the county has in interest in promoting and providing for the education of its citizens."

We have been provided a copy of Jasper County's Ordinance of June 6, 2005. In the Ordinance, County Council found that "the Referendum Facilities are infrastructure serving the County and that such infrastructure is for the benefit and welfare of the people who are residents of the County and for the benefit of the economic welfare and economic improvement of the County and its citizens." Thus, the Ordinance authorized the existence of an amount not exceeding $14,500,000 of special source revenue bonds to pay a portion of the costs of the Jasper County School District school facilities. This conclusion appears to be well documented. We are advised in the Memorandum submitted by Mr. Howell, Bond Counsel, that the Deputy for County Administration of Economic Development is of the opinion that the educational system in Jasper County has retarded the County's economic development. This official notes that three different developers have backed out of major residential developments in the County, blaming the school system. Moreover, the official contends that a major paper company decided not to locate in the County for the same reason. While, of course, we may not make factual determinations in an opinion, *See, Op. S.C. Atty. Gen.*, December 12, 1983, from the information provided there does appear to have been a reasonable basis for Jasper County Council's determination to issue the special source bonds in question.

Conclusion

The question you have raised – whether the term "infrastructure" as used in § 4-29-68 includes a county's schools – has not yet been addressed by the courts of South Carolina. Thus, the question is novel. In this Office's only opinion concerning this question – rendered more than five years ago – we demurred, concluding that the courts should definitively resolve the issue.

That being said, however, it is our opinion that a court would conclude that § 4-29-68 authorizes Jasper County to issue special source revenue bonds for the purpose of assisting the School District of Jasper County in its school construction efforts. The concept of "infrastructure" as including schools has evolved considerably since our opinion of February 2, 1999 was written and is much more established now than then. Even so, our earlier opinion recognized that there was support for a construction of "infrastructure" which included schools. Today, the common and ordinary definition of "infrastructure" – which is the one a court is likely to deem applicable – clearly includes a community's schools as part of its infrastructure. Moreover, our Supreme Court has consistently held that the construction or maintenance of a county's schools is within the corporate purpose of a county (or municipality). So too have the opinions of this Office. Indeed, in *Grey v. Vaigneur, supra*, a case upon which this Office has relied in several opinions, the Court recognized that "[c]ertainly, the county has an interest in providing for the education of its citizens." Here, the Jasper County School District is coextensive with the County. Thus, in our view, Jasper's schools is part of the "infrastructure serving" the County. It is thus reasonable for County Council to conclude that, in order to enhance the economic development of the County, special source revenue bonds may be used to assist the School District in building new schools.

In addition, we note that the legislative purpose of § 4-29-68 was to provide a source of financing a county's infrastructure for the purpose of economic growth and development. Our courts have, in recent years, generally construed constitutional provisions and statutes in favor of economic growth. *Nichols, supra; Ed Robinson, supra.* Moreover, Art. VIII, § 17 and § 4-9-25 require that the power of counties under Home Rule be broadly construed. Unless circumscribed by general law, county and city councils have been given the power formerly exercised by the General Assembly in the areas of local government. *See, Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974) ["It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than the State Capitol."] Jasper County has pointed to an urgent need to stimulate economic growth and development by upgrading its schools. All of these factors would weigh heavily in a court's upholding Jasper County's exercise of its authority pursuant to § 4-29-68 as reasonable in this instance.

Of course, our opinion only comments upon our advice as to how a court might address the legal question of interpretation of § 4-29-68. Any policy questions regarding whether to use this statute in this situation would be within the discretion of the Jasper County Council.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General