



ALAN WILSON  
ATTORNEY GENERAL

March 1, 2011

The Honorable Chip Huggins  
Member, House of Representatives  
323B Blatt Building  
Columbia, South Carolina 29201

Dear Representative Huggins:

We received your inquiry requesting an opinion of this Office concerning county voter ballot initiatives. In the request letter, you inquired about the validity of a hypothetical situation in which voters present a petition for a proposed ordinance to a county council that calls for a reduction in an existing road maintenance fee of \$30.00 to \$15.00 per vehicle registered in the county. According to your letter, the proposed ordinance would read as follows:

“To reduce to \$15.00 per vehicle the present \$30.00 road maintenance fee (RMF) imposed by Ordinance XYZ by petitioning County Council to enact the proposed ordinance and to insure the total proceeds of these fees are deposited in the county general fund and to prohibit any portion of the road maintenance fee being used by individual council members to determine which roads shall be maintained or repaired.”

In your letter, you noted that the county council

elected not to adopt the proposed ordinance and refused to submit the petition to the election commission for verification of the validity of the petition signatures. The council said the proposed ordinance was invalid because; 1-It would limit the county council's authority over their treasury 2-The proposed ordinance violates section 4-9-1210 which excludes voted initiated ordinances which appropriate funds.

#### **Law/Analysis**

Section 4-9-1210 of the South Carolina Code (1986) governs referendums by initiative and provides as follows:

The qualified electors of any county may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.

(emphasis added). To answer your question, we must determine whether this provision allows voters to propose an ordinance reducing a county imposed road maintenance fee.

In interpreting section 4-9-1210, we employ the rules of statutory interpretation, the primary of which is to “to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Kiriakides v. United Artists Comm’n, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

According to section 4-9-1210, voters have wide latitude in proposing ordinances and may do so as long as the ordinance does not appropriate money or authorize the levy of a tax. Generally, our courts recognize the canon of construction “expressio unius est exclusio alterius ” or “inclusio unius est exclusio alterius,” which means “to express or include one thing implies the exclusion of another, or of the alternative.” Hodges, 341 S.C. at 86, 533 S.E.2d at 582 (quotations omitted). Section 4-9-1210 does not specifically exclude ordinances pertaining to the imposition of a fee. In addition, we note that section 4-9-1210 explicitly excludes ordinances involving the levy of tax. Therefore, because the Legislature addressed the levy of taxes and did not address the imposition of fees, section 4-9-1210 could be interpreted to allow ordinances regarding fees to be proposed by a voter-initiated referendum.

However, it is our understanding that the county council views the ordinance as involving the appropriation of money. To our knowledge, neither a court nor this Office, has considered whether the imposition of a fee constitutes an ordinance appropriating money for purposes of section 4-9-1210. However, in Focus on Beaufort County on Behalf of Certain Registered Voters of Beaufort County v. Beaufort County, 318 S.C. 227, 456 S.E.2d 910 (1995), our Supreme Court addressed the portion of section 4-9-1210 covering the exclusion for ordinances appropriating money. The case involved an ordinance proposed by a group of Beaufort County voters limiting the growth rate of spending in Beaufort County to the rate of growth of county personal income. Id. at 912, 456 S.E.2d at 230. In addressing whether the ordinance is permissible under section 4-9-1210, the Court stated:

Section 4-9-1210 proscribes the electorate of a county from proposing an ordinance which appropriates money or authorizes the levy of

taxes. Appellants argue section 4-9-1210 does not prohibit the electorate from introducing an ordinance which limits all county appropriations. Appellants' interpretation of section 4-9-1210 would lead to the absurd result of prohibiting the electorate from introducing an ordinance that limits a specific county appropriation but allowing the electorate to introduce an ordinance that limits all county appropriations.

Legislative enactments which exclude appropriation measures from the initiative procedure are intended to preserve County Council's general authority over the County's treasury and to preclude special interest groups from attempting to usurp that authority through the use of initiatives. See Associated Indus. v. Secretary of the Commonwealth, 413 Mass. 1, 5-6, 595 N.E.2d 282, 285 (1992). In limiting all county appropriations, the proposed ordinance clearly restricts County Council's authority over the treasury and, thus, defeats the plain legislative intent of section 4-9-1210. Accordingly, we find the proposed ordinance violates section 4-9-1210.

Id. at 912, 456 S.E.2d at 230-31.

The Court's interpretation of what constitutes an ordinance appropriating money appears broad in its decision in Focus on Beaufort County. The ordinance in question did not specifically appropriate money. Rather, the ordinance placed a comprehensive limit on the amount of money Beaufort County could spend. In the situation presented to us, the proposed ordinance also does not specifically appropriate money. The ordinance essentially impacts the county's revenue stream from the imposition of a road maintenance fee. Nonetheless, we understand reducing the road maintenance fee could have a direct impact on the county council's ability to appropriate money as the county's revenue would be reduced. Thus, given the impact on the county's ability to control its on spending and the Court's general concern for a county council's ability to maintain authority over its own treasury, a court could find that an ordinance calling for a reduction in a county's road maintenance fee is an ordinance appropriating money. Accordingly, such a court would then find that this type of ordinance may not be proposed by a voter initiative.

However, we must comment on the Minnesota Court of Appeals decision we discovered in our research. In Gould v. City of Bloomington, 394 N.W.2d 149 (Minn. Ct. App. 1986), the Minnesota Court of Appeals considered whether a provision in the City of Bloomington's Charter prohibiting voters from proposing ordinances appropriating money or levying taxes prevents voters from proposing an ordinance increasing the salaries of the mayor and other council members. Id. The Minnesota Court of Appeals determined that raising salaries "is neither a tax levy or an appropriation of money and, thus, is subject to the referendum provisions." Id. at 152. Our statute includes similar language to that included in the City of Bloomington's Charter. Therefore, we

recognize that our courts, following the same logic as the Minnesota Court of Appeals, could determine that an ordinance reducing a fee is not an ordinance appropriating money.

### Conclusion

Reading the plain language provided in section 4-9-1210 in accordance with the rules of statutory interpretation as provided by our courts, we must note that this provision does not specifically exclude ordinances dealing with fees from the types of ordinances that may be proposed by voter initiative. Furthermore, given the fact that section 4-9-1210 specifically excludes ordinances dealing with the levy of taxes from those that may be proposed by voter initiative, we believe a court could interpret this provision as allowing voters to propose an ordinance reducing a county imposed road maintenance fee.

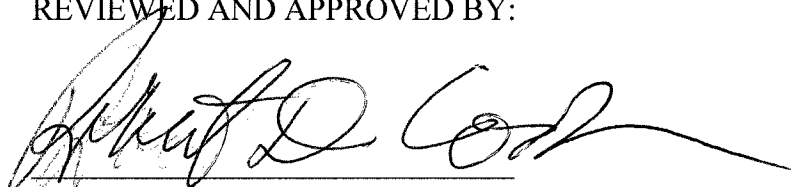
However, given our Supreme Court's broad interpretation of what is viewed as an ordinance appropriating money in Focus on Beaufort County, we also recognize that a court could interpret the ordinance reducing the road maintenance fee as such an ordinance because the reduction in the fee would most certainly impact a county's ability to appropriate money. County Council has obviously construed the statute in accordance with the Supreme Court's reasoning in Focus. Nonetheless, the issue you present falls within an area of the law in which we do not currently have sufficient guidance from our courts. Additionally, we are not able to fully gather the Legislature's intent from section 4-9-1210 with regard to what constitutes an ordinance appropriating money. Therefore, we cannot resolve the issue you present to us. Without further judicial guidance, if the situation described occurs and voters propose the ordinance described, we recommend that the county file a declaratory judgment action with the appropriate court to make a final determination as to whether reducing a fee constitutes an ordinance appropriating money, prohibited from being proposed by voter initiative under section 4-9-1210.

Sincerely,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General