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:

As a follow up to the opinion issued to you today, you have also asked whether the Legislature possesses authority to "overrule"or alter the Supreme Court's decision in *Focus on Beaufort County on Behalf of Certain Registered Voters of Beaufort County v. Beaufort County*, 318 U.S. 227, 456 S.E.2d 910 (1995). As we noted in today's opinion, that decision addressed the portion of § 4-9-1210 covering the exclusion for ordinances appropriating money. Only recently, our Supreme Court emphasized that

> [t]he power of our state legislature is plenary, and therefore, the authority given to the General Assembly by our Constitution is a limitation of legislature, not a grant ... . This means that "the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitutions."

City of Rock Hill v. Harris, ___ S.E.2d ___, 2011 WL 204799 (January 24, 2011), quoting *Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133 (1946).

The Supreme Court has emphasized that the Legislature is free to alter its construction of statutes so long as it does so prospectively and does not interfere with existing judgments. In *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 600, 614 S.E.2d 629, 631 (2005), the Court emphasized as follows:

> [b]ecause the legislature does not have the authority to overrule a decision by this Court, the amended statute cannot apply retrospectively. See *Steinke v. South Carolina Dep't. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (holding legislature lacked authority to retroactively overrule Court's interpretation of a statute). Moreover, we have found that "a judicial interpret[ation] of a statute is determinative of its meaning and effect, and any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and

cannot be applied retroactively." *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974). Because a prior, on-point judicial decision has been rendered, any subsequent statutory amendments apply prospectively only. To decide otherwise would allow the legislature, in effect, to overrule judicial decisions in violation of the separation of powers doctrine.

Accordingly, so long as any additional legislation does not apply retroactively, the General Assembly is free to amend a statute which is contrary to an interpretation of our Supreme Court.

Sincerely,

Robert D. Cook
Deputy Attorney General