September 11, 2007

Mary C. McCormac, Esquire
Mary C. McCormac Attorney at Law, LLC
Post Office Box 1535
Clemson, South Carolina 29633

Dear Ms. McCormac:

We understand from your letter that you represent the Town of Pendleton (the "Town") and wish to request an opinion of this Office on behalf of the Town concerning the garnishment of wages of Town employees. You explain as follows:

> The Town has received an "Order of Withholding From Earnings" from United Student Aid Funds, Inc., instructing the Town to garnish the wages of a Town employee for an apparent failure to repay student loans.

Based on our Supreme Courts findings in United Student Aid Funds, Inc. v. South Carolina Dept. of Health and Environmental Control, 356 S.C. 266, 588 S.E.2d 599 (2003), you inquire as to whether "the Eleventh Amendment operates to similarly bar a suit brought against a South Carolina Municipality for failure to comply with a withholding order issued pursuant to 20 U.S.C. § 1095(a)."

Law/Analysis

In United Student Aid Funds, Inc. v. South Carolina Department of Health and Environmental Control, 356 S.C. 266, 588 S.E.2d 599 (2003), the South Carolina Supreme Court considered whether the South Carolina Department of Health and Environmental Control, as a state agency, must comply with a federal statute requiring employers to garnish wages of their employees who default on their student loan agreements. As the Court explained, the federal act creating Federal Family Education Loan Program contains a provision allowing student loan guaranty agencies to issue orders requiring a defaulting loan holder's employer to withhold a portion of the defaulting loan holder's income until the debt is paid. Id. at 270, 588 S.E.2d at 601 (citing 20 U.S.C.A. § 1095a(a)). The act also allows the guaranty agency to sue the employer for failing to comply with the withholding order. Id. The Court cited the "plain statement rule" in that Congress

may abrogate the states' immunity "by unequivocally stating in 'clear and manifest' language its intent to abrogate the immunity." Id. at 273, 588 S.E.2d at 603. The Court found Congress failed to specify that states are to be included in the term employer under the act. Id. at 274, 588 S.E.2d at 603. Therefore, the Court concluded because "Congress did not include a clear statement of its intent to abrogate state sovereignty," the Eleventh Amendment bars application of this provision of the act to a state agency." Id. at 274, 588 S.E.2d at 603.

According to the United States Supreme Court: "The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations." Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977). Because the Town is a municipality and according to the Supreme Court, is not protected by the Eleventh Amendment, we are of the opinion that the principles conveyed by our Supreme Court in United Student Aid Funds, Inc. are inapplicable to the Town.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

_____

Robert D. Cook
Assistant Deputy Attorney General