



ALAN WILSON
ATTORNEY GENERAL

April 23, 2013

The Honorable J. Yancey McGill
Senator, District No. 32
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McGill:

You seek an opinion regarding "the effects on projects approved in an initial referendum to impose a one cent sale tax pursuant to Section 4-10-300, *et seq.* of the South Carolina Code."

By way of background, you provide the following information in your letter:

As you [are] aware, Section 4-10-300, *et seq.* of the South Carolina Code provides for the imposition of a one cent sales tax within a county to fund certain capital projects from the proceeds of the tax. The tax is initiated by ordinance of the county governing body and must be approved by the voters in a referendum called for that purpose. The referendum must include the length of time the tax will be imposed, the amount anticipated to be collected, and the projects to be funded by the tax. The projects to be funded must be listed and subsequently funded in priority order. The tax may be reimposed for an additional amount of time pursuant to Section 4-10-340, whenever the initial authorization expires.

Section 4-10-340 also provides how funds collected in excess of the original amount anticipated to be collected are to be spent if the tax is reimposed. However, if the tax is reimposed and additional projects are authorized in the referendum reimposing the tax, this section does not provide guidance as to the converse situation when the amount anticipated in the original referendum is not collected and there is correspondingly insufficient revenue to complete the projects listed in the original referendum.

It would appear that the appropriate interpretation in this situation would be that the funds collected pursuant to the reimposed tax could not be spent on new projects until the original projects are fully funded and completed. Otherwise, the will of the voters who approved the initial referendum imposing the tax would be frustrated.

I have included an opinion from Director William Blume addressing this particular situation in Florence County for your review during the consideration of your opinion.

Law/Analysis

The Capital Project Sales Tax Act, codified at S.C. Code Ann. Sections 4-10-300 *et seq.*, "authorizes a county governing body to impose a one percent sales and use tax *in accordance with a referendum* for a *specific purpose* and for a limited amount of time to collect a limited amount of money. The revenues collected pursuant to this article may be used to defray debt service on bonds used to pay for projects authorized in this article." Section 4-10-310 (emphasis added). Pursuant to Section 4-10-330, the sales and use tax authorized by such Act

...is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission...subject to referendum approval in the county. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within or without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

- (a) highways, roads, streets, and bridges;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of these projects;
- (c) cultural, recreational, or historic facilities, or any combination of these facilities;
- (d) water, sewer, or water and sewer projects;
- (e) flood control projects and storm water management facilities;
- (f) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (e) of this subsection;
- (g) any combination of the projects described in subitems (a) through (f) of this item;....

Section 4-10-340 sets forth requirements as to tax imposition and termination. Such provision states:

§ 4-10-340. Tax imposition and termination.

(A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the thirtieth of April in an odd-numbered year, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4-10-330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

Pursuant to § 4-10-350, the sales and use tax levied pursuant to § 4-10-300 *et seq* is "administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected." Thus, DOR is the agency charged with administering the Act.

In sum, the question presented is "when the amount anticipated in the original referendum is not collected and there is correspondingly insufficient revenue to complete the projects listed in the original referendum," whether additional projects may be "authorized in the referendum reimposing the tax." Our opinion is that they may not.

A number of principles of statutory construction are applicable. First and foremost, is the cardinal rule of construction, 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). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably 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 used 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). The best evidence of the Legislature's intent is found in the plain language of the statute. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). Further, as the South Carolina Supreme Court stated in Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942), "it is a familiar canon of construction that a thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter. It is an old and well established rule that the words ought to be subservient to the intent and not the intent to the words." In addition, in construing statutory language, a statute must be read as a whole, not provisions thereof in isolation. All sections must be construed together with one another and each section given effect. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). As our Supreme Court has recognized, "[i]n ascertaining the intent of this Legislature, a court should not focus on a single section or provision but should consider the language of the statute as a whole." Croft v. Old Republic Ins. Co., 365 S.C. 402, 618 S.E.2d 909, 914 (2005).

In addition, it is the longstanding policy of this Office to "defer to the agency charged with the administration of a statute." *Op. S.C. Atty. Gen.*, April 28, 1999 (1999 WL 387052), referencing *Op. S.C. Atty. Gen.*, October 30, 1996. As we have stated, "[t]he interpretation of the agency charged with the administration of statutory provisions will be accorded the most respectful consideration and will not be overruled absent compelling reason." *Op. Atty. Gen.*, April 28, 1999, *Id.*, citing *Goodman v. City of Columbia*, 318 S.C. 489, 458 S.E.2d 531 (1995).

In addition, as we noted in an opinion, dated February 19, 2013 (2013 WL 770264), "[i]t is a settled rule ... that tax laws are to be strictly construed against the State and in favor of the taxpayer, and where there is reasonable doubt as to the meaning of a revenue statute, the doubt is resolved in favor of those taxed." (quoting *Op. S.C. Atty. Gen.*, Op. No. 82-41, 1982 WL 155010 (June 9, 1982)).

Finally, as we have recognized, the imposition of a local sales tax "represent[s] the will of the voters that funds be devoted to the purposes set forth in the referendum question." *Op. S.C. Atty. Gen.*, September 7, 2012 (2012 WL 4283915). "[W]here people have voted for" an increased tax, "the voters' decision will stay in place until affected by law." *Op. S.C. Atty. Gen.*, October 8, 2008 (2008 WL 4870545), quoting *Op. S.C. Atty. Gen.*, October 16, 2000. A referendum, such as a bond referendum or one imposing a tax burden seeks to "determine the will of the voters upon the assumption of a public debt to the amount of and for the object proposed." *Op. S.C. Atty. Gen.*, December 23, 2003 (2003 WL 23138213), quoting *Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax*, 202 Va. 462, 117 S.E.2d 753 (1961) (emphasis added). The effect of a referendum setting aside revenues for a specific purpose "is to limit the use of the funds for the purposes set forth' in that question." *Op. S.C. Atty. Gen.*, August 22, 2003 (2003 WL 22050874), quoting *Op. S.C. Atty. Gen.*, June 18, 1994. As stated in *Op. S.C. Atty. Gen.*, January 30, 1984, where "a special fund is created or set aside

by statute for a particular purpose or use, it must be administered and expanded in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." (quoting 81A C.J.S., States, § 228 at 799-801).

You have provided us with the opinion of the Honorable William M. Blume, Director of the South Carolina Department of Revenue to the Honorable James T. Schofield, Chairman of Florence County Council, dated March 13, 2013, regarding this issue. Director Blume's opinion states as follows:

[a]ccording to our interpretation of the statutes [Capital Project Sales Tax Act, § 4-10-300 et seq.] the reimposition of the tax must be for the same projects that the initial referendum approved which were not completed during the seven year timeframe of the project. While § 4-10-340 anticipates the use of funds remaining prior to the expiration of the seven year timeframe, the reverse situation does not appear to be addressed.

Because the specific statute is silent on this situation, we must look to the general language of the statutes. Since the Council is bound by the statutes and State Constitution to describe, with specificity, any use for public funds, and since the initial 2006 ordinance and referendum only dealt with the enumerated Florence County Road Projects specified in Resolution No. 20-2006/07, then Council is limited to those particular projects. As these projects have not been completed as outlined in the Ordinance, according to the Report to Council as of January 31, 2013, and since the initial amount of \$148,000,000 has not been raised, (see the same report), then Council should not be allowed to reimposed the one percent capital project sales tax for any other or additional purposes which were not addressed in the referendum posed to end approved by the voters in 2006, but additional projects, even those permitted under § 4-10-330(A)(1) may not be added unless there are excess funds collected, which is not the case. Resolution No. 13-2012/13 appears to establish a Commission to continue the Capital Project Sales Tax and to consider funding capital projects within the county and the formulation of the referendum question. If the Commission is posing a referendum for new projects, any new projects should not be undertaken until after this current Capital Project's term has expired in 2014. Any extension of the current capital Project Sales Tax would have to involve *only* those projects approved by the electorate in 2006.

Based upon the rule of law and the longstanding policy of this Office, referenced above, that a court will normally defer to the construction of a statute by the agency charged with the administration thereof, we defer to Director Blume's legal analysis.

But, in addition, we agree with such analysis. As Director Blume concludes, nowhere in the Capital Project Sales Tax Act is there express or implied authority to reimposed the tax for different purposes than those the voters approved in the initial referendum when the initial tax imposition is insufficient to fund those projects the voters initially approved. Indeed, Section 4-10-310 deems the Capital Project Sales Tax "subject to a referendum within the county area *for a specific purpose or purposes* and for a limited period of time." (emphasis added). Moreover, it is instructive to note that § 4-10-330(A)(1) mandates that Council's ordinance authorizing the referendum must specify "(1) *the purpose* for which the proceeds of the tax are to be used ...," as enumerated in Subsection (A)(1). (emphasis added). Section 4-10-330(B) also requires that where the tax "is imposed for more than one purpose, the enacting ordinance *must set forth the priority in which the proceeds are to be expended for the purposes stated.*" (emphasis added).

Section 4-10-340(C)(2) is also instructive. Such provision states that "(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimposed the tax in priority order as the projects appeared on the enacting ordinance."

All of these provisions strongly indicate an intent by the General Assembly that Council's authority is here tied to the specific projects and in the specific order which the voters approved in the referendum. As our Supreme Court has recognized in another context with respect to a sales and use tax imposed pursuant to another statutory provision, "[t]his Court will overturn the results of an election ... when mandatory statutory provisions have been violated *and those violations interfere with a full and fair expression of the voter's choice.*" *Douan v. Charleston Co. Council*, 357 S.C. 601, 608, 594 S.E.2d 261, 264 (2003) (emphasis added).

Also instructive are our previous opinions relating to imposition of the Capital Project Sales Tax. These opinions reflect our interpretation that the Capital Project Sales Tax Act must be strictly complied with and we will not imply a use of funds pursuant thereto not specifically authorized. In an Opinion dated May 20, 2004 (2004 WL 1182081), we stated:

[a]s set forth by Section 4-10-330, the General Assembly authorized the expenditure of sales and use tax proceeds for certain projects and specified the types of projects for which such expenditures may be made. A listing of such of such suggested projects set forth in such statute reflects tangible, permanent types of projects and facilities. See: Ops. Atty. Gen. dated December 4, 1985 and August 10, 1981. Generally, public funds may be expended only for designated purposes as authorized by the General Assembly. As stated in an opinion dated October 1, 2001, "(i)t is well recognized that public funds may be expended only for their designated purpose." Consistent with such, it does not appear that funds could be used to acquire only land for a recreational facility where the actual construction of the improvement would be budgeted from a different source of revenue or at a different point in time.

And, in *Op. S.C. Atty. Gen.*, February 2, 2001 (2001 WL 265266), we addressed the question whether the county could re-prioritize the roads to be improved and the allocations to the cities following the referendum's approval by the voters. In concluding that the county could not, we explained as follows:

[t]he ballot question approved by County Council and presented to the voters clearly states that the proceeds of the tax will be distributed to projects in the priority listed in the question. Later in the same paragraph the question does state that the priority is subject to change, but that disclaimer appears to justify only changes based on typical unexpected complications of acquisition and construction or "other unforeseen circumstances." In our opinion, a re-prioritization of the projects based on different criteria, which could have been accomplished before submitting the question to the voters, would violate the spirit of the ballot question, if not the exact letter.

In an Opinion of this Office dated June 28, 1994, we advised that a city could use its discretion in the precise allocation of funds from municipal bonds. In that case, at the time of the referendum the city planned to apply the proceeds to construct two fire stations. After the referendum passed, the city wanted to use the funds for a purpose other than that which was specified in the referendum. See *id.* Those circumstances, however, are distinguishable. The Municipal Bond Act, S.C. Code Ann. § 5-21-210 *et seq.*, does not contain a provision requiring the governing body to delineate the priority for projects to be funded, as does the Capital Project Sales Tax Act in § 4-10-330(B). By requiring the county to specify the priority of the projects, the General Assembly has somewhat limited the discretion of the local governing body. The county may choose how to distribute the proceeds exactly or may only specify a formula for determining how the various projects will be funded, but in our opinion the county is obligated to expend the proceeds in a manner consistent with that presented to the voters in the referendum.

That same reasoning applies here. As § 4-10-330(A)(1) mandates, the ordinance authorizing the referendum must set forth "the purpose for which the proceeds of the tax are to be used" and Subsection (B) requires "the priority in which the proceeds are to be expended for the purposes stated." This is what the voters approved. Thus, it is our opinion that where the revenues raised pursuant to the initial referendum are insufficient to meet the specific projects and in the order of priority the voters approved, county council is not authorized to alter those specific projects and priorities in any reimposition of the tax pursuant to § 4-10-340.

Conclusion


Consistent with our longstanding policy, we defer to the interpretation of the agency charged with the administration of the statute in question. In this instance, the Director of the Department of Revenue, Director Blume, has interpreted the Capital Project Sales Tax Act as not allowing a county council "to reimpose the one percent capital project sales tax for any other or additional purposes which were not addressed in the [initial] referendum posed to and approved by the voters in 2006." In the opinion of Director Blume, the "reimposition of the tax must be for the same projects that the initial referendum approved which were not completed during the seven year timeframe of the project" and that "[a]ny extension of the current Capital Project Sales Tax would have to involve *only* those projects initially approved by the electorate in 2006." (emphasis in original).

Moreover, for the reasoning stated herein, we agree fully with Director Blume's analysis. In our opinion, when the initial referendum authorized by the Capital Project Sales Tax Act does not raise sufficient revenue to fund the projects voted upon and approved by the voters, the Legislature intended that any reimposition of the one percent tax permitted by § 4-10-340 must be only for the *specific projects* approved by the voters in the initial referendum. Nowhere in the statute is county council authorized to add projects upon reimposition of the tax in such circumstances. And we have consistently construed the statutes authorizing this tax strictly.

Moreover, § 4-10-340(A)(1) mandates that the ordinance authorizing the referendum must set forth "the purpose for which the proceeds of the tax are to be used" and Subsection (B) requires "the priority in which the proceeds are to be expended for the purposes stated." Clearly, the Legislature has tied the imposition of the tax and its utilization *to those projects the voters specifically approved and in the order of priority approved by them*. As we have recognized, where a special fund is established for a specific purpose, it may not be used for other purposes. Additional projects were thus not intended by the General Assembly to be added by a county council. To do so would be a departure from and would fail to honor the will of the voters in the original referendum. See, *Op. S.C. Atty. Gen.*, February 2, 2001.

In our opinion, county council must keep faith with the wishes and will of the voters in the initial referendum.

Sincerely,



Robert D. Cook
Deputy Attorney General