

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

June 28, 1993

Jack S. Flynn, Esquire  
Union County Attorney  
Post Office Box 309  
Union, South Carolina 29379

Dear Mr. Flynn:

You have advised that Union County proposes to enter into a multi-county industrial park agreement with Spartanburg County. The land subject to the industrial park agreement will be located entirely within the boundaries of Spartanburg County. Certain of the industrial projects there will have a capital investment sufficient to take advantage of the arrangement known as "fees in lieu of taxes"; other industrial projects will not be as heavily capitalized. At present it is anticipated that one percent (1%) of the revenues and expenses will be attributable to Union County for further allocation to the taxing entities within Union County. As County Attorney, you have requested our interpretation of S.C. Code Ann. §§ 4-1-170 and 4-1-175 as to the following questions concerning the proposed industrial park.<sup>1</sup>

Question 1

Does the term "taxing entities" as used in § 4-1-170(3) encompass all entities with taxing authority within Union County, or is it limited only to taxing districts with county-wide jurisdiction?

Article VIII, § 13 of the state Constitution authorizes the joint administration of functions and exercise of powers and sharing costs thereof among or between the State

---

<sup>1</sup>Where reference is made to "fees in lieu of taxes" statutes, it is not our intention to imply that industrial projects located in the proposed park which do not otherwise qualify for the "fees in lieu of taxes" would so qualify.

Mr. Flynn  
Page 2  
June 28, 1993

or the various political subdivisions. In particular, § 13(D) permits counties to jointly develop an industrial park with other counties, such park to be located within the geographic boundaries of one or more of the participating counties. The area comprising such park and property located therein is exempt from ad valorem taxation; instead, the owner or lessee of property situated in the park would pay an amount equal to the taxes or other in-lieu-of payments which would have been paid but for this constitutional exemption. Section 13(D) requires the participating counties to reduce to a written instrument binding on the participating counties the agreement to develop and share expenses and revenues of the park. The General Assembly adopted various measures to implement this constitutional provision.

Section 4-1-170 of the Code provides guidelines for the agreement to be entered into when counties jointly develop an industrial park as permitted by Article VIII, § 13(D). The agreement must include provisions which, inter alia, "(3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties." As noted in your question, the term "taxing entities" is not defined therein. In addition, the statute makes no reference to entities with county-wide taxing authority or otherwise comments on which taxing entities are affected or required to share the revenues produced by the county's participation in the industrial park. While the statute is not entirely clear, it could be read as permitting the affected county to determine which taxing entities will be affected by the agreement.

This conclusion appears to be bolstered when one considers § 4-29-67, as to allocation of fees in lieu of taxes for industrial projects qualifying as set forth therein.<sup>2</sup> Subsection (J)(2) provides: "For a project located in an industrial development park as defined in Section 4-1-170, distribution of the fee in lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park." Conversely, for industrial projects not located in an industrial development park, the proportional distribution scheme for the fees in lieu of taxes is much more specific and refers to each "millage-levying-entity" in the county.

Under the factual scenario described in your letter and considering the broad and non-limiting language of § 4-1-170, we concur with your conclusion that Union County

---

<sup>2</sup>Section 4-29-67 has been massively amended by S.595, R-162 of 1993, which is awaiting the signature of the Governor at the time this opinion is being written. Subsection (J) will be renamed as subsection (L); from our research, it appears that the language of subsection (J) was not amended.

Mr. Flynn  
Page 3  
June 28, 1993

has discretion to determine which taxing entities will benefit from the multi-county industrial park agreement.

Question 2

To be classified as a taxing entity for purposes of § 4-1-170(3), must the taxing entity have a current operational or debt service millage, or is the authority to levy a future tax sufficient to fall within this definition?

Again, this question is unanswered by the terms of § 4-1-170. Your interpretation is that a taxing entity would be determined by the right to tax as opposed to an existing millage. As you observe, the impact of the park may be such that a taxing entity will incur future expenses for which a tax levy may be imposed.

If this were an industrial project not within an industrial park as is being contemplated, Section 4-29-67 would appear to compel an opposite interpretation, as present subsection (J)(1) contemplates that the millage rate remain fixed, along with the millage-levying entities, for the specified time. There appears to be flexibility with respect to projects located in an industrial park as defined in § 4-1-170, however. Thus, we concur with your conclusion, considering the factual scenario described in your letter.

Question 3

Upon the allocation of revenues by Union County to other taxing entities within the County, are multi-county park expenses also to be allocated and paid by the other taxing entities?

The response to this question is not dependent on statutory interpretation but instead is a matter to be agreed upon by the participating counties. Section 4-1-170(1) provides, inter alia, that the written agreement is to "address sharing expenses of the park." As you observe, expenses may be allocated in the same proportion as income is allotted between the taxing entities, or the County has discretion to allocate expenses in a different manner.

Question 4

Can special source revenue bonds authorized by § 4-29-68 be secured by the entire one percent (1%) of the revenues to be

received by the County and no allocation be made to any other taxing entity?

Section 4-1-175 authorizes the issuance of special source revenue bonds; in part that Code section provides:

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. ...

Similarly, § 4-29-68(A)<sup>3</sup> provides that "A county ... that receives and retains revenues from a payment in lieu of taxes pursuant to Section 4-29-60 or Section 4-29-67 may issue special source revenue bonds secured by and payable from all or a part of such revenues," subject to the specified terms and conditions. Two of the terms and conditions specified in § 4-29-68(A) include:

- (5) The bonds are, and must state on their face that they are, (a) payable solely from all or a specifically described part of the payment in lieu of taxes received and retained by the issuer under Section 4-29-60, Section 4-29-67, or Section 13 of Article VIII of the Constitution of this State, ... .
- (6) The ordinance authorizing the issuance of the bonds shall specifically describe the portion of the payments in lieu of taxes received and retained by the issuer from which the bonds are payable and by which the bonds are secured.

---

<sup>3</sup>Section 4-29-68 has been amended by S.595, R-162 of 1993, which is awaiting the signature of the Governor as noted in footnote 2. The amendments do not appear to have affected the language of § 4-29-68 cited herein.

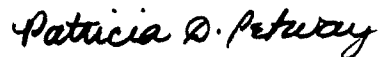
Mr. Flynn  
Page 5  
June 28, 1993

As discussed previously, Union County will have discretion in determining how to distribute proceeds of the revenues it will receive under the multi-county industrial park agreement. Conceivably the county could retain all of the revenues for use by the county. Both § 4-1-175 and § 4-29-68 specifically state that all or a portion of the revenues which a county receives and is entitled to retain may be used to secure special source revenue bonds. Thus, the county has discretion to make this determination, as well.

We trust that the foregoing has adequately responded to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,



Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions