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The State of South Carolina

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September 7, 1993

Mr. Wayne L. Sterling
Interim Director
South Carolina Department of Commerce
P.O. Box 927
Columbia, South Carolina 29202

Dear Mr. Sterling:

You have asked a number of questions concerning the development of regional industrial parks under S.C. Const. art. VIII, § 13, and S.C. Code Ann. § 4-1-170 (Supp. 1992). The issues which you have raised are not specifically addressed by the statutes or constitutional provisions concerning the establishment of industrial parks. Because the constitutional provision and the law are relatively new, there has been very little case law established concerning these parks. Further, while this office may offer its opinion on the interpretation of a statute, only a court can provide a legally binding interpretation of the statute.

Question 1. Must the park boundaries be specifically defined in the agreement or may the boundaries be described in such a way that land parcels may be added or deleted from the agreement with the concurrence of the counties involved?

The South Carolina Constitution allows counties to jointly develop an industrial park with other counties within the geographical boundaries of one or more of the member counties. Section 4-1-170 requires a written agreement to develop the park. In connection with the written agreement, the section specifically provides:

> . . . The written agreement entered into by the participating counties must include provisions which:
>
> (1) address sharing expenses of the park;

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(2) specify by percentage the revenue to be allocated to each county;
(3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.

There are no other items which are statutorily required to be specified in the written agreement. It, therefore, seems reasonable that the agreement could provide that the park can be expanded or reduced in size based on the agreement of all participating counties.

Question 2. Under a single agreement, may counties that are a party to a regional park agreement under § 4-1-170 have several different noncontiguous parcels of land identified as "the industrial park"?

Although the statute does not clearly prohibit the use of noncontiguous property in an industrial park, it appears that the wording of the constitutional provision and the statute contemplates a single park area. Only a court can determine if multiple sites are permissible under the statute; however, the goal of multiple sites may be accomplished through the use of multiple agreements. There is nothing in the statute which prohibits counties from entering into multiple park agreements which would include each separate noncontiguous parcel.

Question 3. Can a county be a party to the agreement in name only or is the sharing of expenses and/or revenues required in order to have a regional park and to qualify for fee-in-lieu payments to the respective taxing authorities?

The purpose of the constitutional and statutory provisions for establishing industrial parks is to allow the joint development of a park between participating counties. Counties which are not sharing in the revenues and expenses of the park are not participating in the park's development and, therefore, could not be parties to the agreement. This interpretation is supported by the fact that § 4-1-170 requires the inclusion of provisions concerning the sharing of expenses and revenues among the participating counties. The language of this requirement appears to suggest that the

Legislature intended each of the counties to participate in these items.

A review of the state income tax jobs credit further supports this interpretation. S.C. Code Ann. § 12-7-1220 (Supp. 1992) allows a jobs tax credit for the creation of certain jobs in the State. For purposes of the credit, each county in the State is designated developed, moderately developed or less developed. The number of jobs required to be created and the amount of credit are dependent upon the county's designation. In developed counties, the credit is three hundred dollars per job and at least fifty jobs must be created. In moderately developed counties, the credit is eight hundred dollars per job and at least eighteen jobs must be created. Finally, in the least developed counties, the credit is one thousand dollars per job and only ten jobs need to be created. The section contains a special provision which allows an additional credit of five hundred dollars for jobs created in an industrial park. Additionally, the amount of the credit and the number of jobs which must be created are based on the counties participating in the park which provides the largest credit, regardless of in which county the park is located. For example, a highly developed county and a less developed county could create a park which is located in the highly developed county. In order for the credit for jobs created in the park to qualify, only ten jobs would need to be created and a credit of one thousand, five hundred dollars would be allowed for each job. If counties were allowed to participate in a park in name only, less developed counties could be used by highly developed counties to obtain a greater jobs credit for industries located in those highly developed counties without having true participation of the less developed county in the industrial park. It seems unlikely that the Legislature would have intended such a result. It is, therefore, our opinion that each participating county must share in the development of the park by sharing the revenues and expenses of the park.

Question 4. Can existing facilities, other than undeveloped land, be included in a regional park?

There appears to be nothing in the law which would prohibit existing facilities from becoming part of an industrial park qualifying under § 4-1-170. If, however, an existing facility is included in an industrial park, there are a

number of items which must be considered. Because the industrial park agreement specifies how revenue is to be distributed between taxing entities, the distribution of the fee payment received in lieu of taxes will be different from the distribution of property taxes associated with that same property. In other words, counties, municipalities, school districts, and other political subdivisions which were receiving revenues from property taxes of an existing facility would no longer receive the same revenue once the property becomes part of a park. This may significantly affect the tax base of the various taxing entities.

Additionally, the county or other political subdivisions may have issued general obligation debt based on the assessed value of the property in question. To the extent that the value of this property is necessary to permit the outstanding general obligation debt within the debt limit of the political subdivision, the political subdivision must continue to receive income from the existing property to the extent that the amount representing its value is necessary to permit the outstanding general obligation debt within the debt limit of the political subdivision. This treatment is consistent with the requirements for issuing special revenue bonds for the park under S.C. Code Ann. § 4-1-175 (Supp. 1992). Failure to allow the political subdivision to continue receiving this amount would jeopardize the political subdivision's bond status, as well as possibly result in an impairment of contract for the bondholders. If existing property is included in a park, the agreement should address this issue when describing how revenue is to be distributed between the counties and the various taxing entities.

Question 5. Can counties using existing industrial/business parks not formed under § 4-1-170 be designated as regional parks under § 4-1-170 and be in compliance with statutory and constitutional provisions?

Neither the Constitution nor the statutes dealing with industrial parks appears to prohibit counties from forming a park which qualifies under § 4-1-170 at the site of an existing industrial/business park. Of course, the problems discussed in the answer to question 4 would be applicable in this situation.

Question 6. At what point in time are taxes exempt and fee-in-lieu payment substituted - (a) when the park is

designated by the counties; (b) when the agreement is signed by the counties; or (c) when new taxable property is placed on the tax roll within the park?

Once a park has been created following the signing of the park agreement by all participating counties, new property would become subject to the fee rather than property taxes once it is placed in service in the industrial park (at the same time which it would become subject to property taxes were the property not located in an industrial park).

If the industrial park is created or expanded, such that it includes existing property which has previously been subject to property taxes, the property will be subject to fee payments only after all property taxes have been paid which are applicable to the last fiscal year end before the property was placed in the park. Property taxes for corporations are assessed based on the value of property as of the last day of a corporation's fiscal year. S.C. Code Ann. § 12-37-970 (1976). The property tax returns are due on the last day of the fourth month following the close of the taxable year. Based on this information, assessments for property taxes for the year in which the return is due are issued. Act. No. 361, Acts of 1982, § 1 provides:

> The General Assembly finds that property enumerated in Section 12-37-970 of the 1976 Code [Section 12-37-970 includes "merchants' inventories, equipment, furniture and fixtures, and manufactures' real and tangible personal property, and the machinery, equipment, furniture and fixtures of all other taxpayers required to file returns with the South Carolina Tax Commission for purposes of assessment for property taxation"] is required to be returned as of the end of the owner's regular accounting period that is used for income tax purposes. The liability of the owner to return and pay a tax on such property is fixed at that time for the next ensuing calendar year.

Since the property tax liability has been established, the property taxes due for that time period cannot be converted to fee payments. Fee payments on the property would become

due instead of property taxes based on the first year end which the property is located in the park.

If you have any additional questions or need additional clarification on this matter, please let us know.

Very truly yours,

Sarah G. Major
Assistant Attorney General

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