

5302 Highway

The State of South Carolina



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January 6, 1994

Ronald W. McKinney, Esquire
Chairman, Greenville County
Transportation Committee
Post Office Box 569
Greer, South Carolina 29652

Dear Mr. McKinney:

As chairman of the Greenville County Transportation Committee, you have requested the opinion of this Office as to whether S.C. Code Ann. § 12-27-400, as amended in 1993, when read as a whole, includes local roads improvements among projects qualifying for "C fund" expenditures.¹ You enclosed with your request a very thorough memorandum on the question, which we appreciated.

Section 12-27-400 was amended by Part II, § 23 of Act No. 164 of 1993 (the 1993-94 Appropriations Act), to revise the procedure for use of "C fund" revenues, to have county transportation committees appointed by the county legislative delegations, which committees are to adopt a countywide (or regional) transportation plan and take other actions as outlined therein. Due to ambiguous language within new § 12-27-400, the question arises as to exactly which roads the "C funds" may be applied.

In interpreting any statute, the primary objective of both the courts and this Office is to determine and effectuate legislative intent if at all possible. Bankers Trust of South

¹ As you may be aware, § 12-27-400 as amended in 1993 is being challenged in a lawsuit still pending resolution. We do not believe the issue you have raised is related to the litigation, however, and thus are undertaking this opinion. Should a court subsequently rule on this issue, today's opinion would obviously be preempted by the court's ruling.

Document Letter

Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). The intent of the legislature rather than the language is the dominant factor, and if legislative purpose can reasonably be discovered from the language, the purpose will prevail over the literal interpretation of the statute. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). Courts will not construe a statute so as to make its application absurd, unreasonable, or unjust. Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634 (1954). The court in Waring v. Cheraw & Darlington Railroad Co., 16 S.C. 416 (1982), substituted one word for another to disregard a "manifest error" in a charter, 16 S.C. at 425, citing earlier South Carolina law for the principle that evident intention will control the use of an inappropriate and senseless word whether in a statute, deed, or will.

Applying these principles of statutory construction to amended § 12-27-400, we observe that the statute provides a means by which roads of the various counties may be constructed, improved, and maintained. The "C funds" are apportioned to the counties by the formula specified in § 12-27-400(A). Funds are allocated to the county transportation committees by § 12-27-400(B), though the Department of Transportation may continue to administer the funds so allocated to a particular county if the county transportation committee so requests.

By § 12-27-400(C), the funds expended "must be approved by and used in furtherance of a countywide transportation plan adopted by a county transportation committee." Prior to expenditure of these funds, § 12-27-400(F) requires the county transportation committee to adopt specifications for "local road projects." Adoption of plans, specifications, and the like, and particularly the use of the phrase "local road projects" show a legislative intent that § 12-27-400 relate to local (county or regional) construction, maintenance, and improvement of road projects.

The difficulty with this interpretation is within the language of § 12-27-400(A), which provides that "[t]he monies collected pursuant to the provisions of Section 12-27-240 must be deposited with the State Treasurer and expended on the State Highway System for construction, improvements, and maintenance"² While this sentence appears to require funds collected pursuant to § 12-27-240 to be expended on the State Highway System, § 12-27-400(G) then provides: "The provisions of this section may not be construed as affecting the plans and implementation of plans for a Statewide Surface Transportation System as developed by the South Carolina Department of Highways and Public Transportation." The inclusion of the phrase "State Highway System," (which

² The predecessor statute referred to the State Secondary Highway System, urging the conclusion that a drafting error has occurred.

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phrase is not defined within the gasoline tax scheme) with consistent and subsequent referrals to local plans, local specifications, and local road projects, culminating with the exclusionary language of § 12-27-400(G), evidences a legislative intent that road projects of a local (or regional) nature rather than state highways were the focus of funds expended pursuant to § 12-27-400. Any other interpretation would create an absurd result and would permit an inappropriate phrase to prevail over the legislative intent as expressed otherwise throughout § 12-27-400.

The language "State Highway System" in § 12-27-400(A), when read with subsequent language referring to local road projects, appears to create an ambiguity, which ambiguity is resolved by the restrictive language of § 12-27-400(G). Even without that restrictive language, however, the ambiguity could be resolved by the principle that the last or latest expression of legislative intent is that which appears last in point of time or order of arrangement; the latest expression of the legislative will is deemed to be prevailing. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943).

In conclusion, it is the opinion of this Office that § 12-27-400, as amended in 1993, when read as a whole, includes local road construction, maintenance, and improvements among the projects qualifying for expenditure of "C funds."

With kindest regards, I am

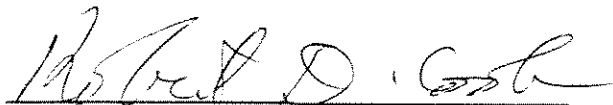
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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