THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. _____ March 14, 1990

SUBJECT: Taxation and Revenue - Joint Industrial Parks.

SYLLABI:

1. A municipality may agree to sell utility services to an industrial park in an adjacent county provided such agreement is in accordance with the applicable provisions of Sections 5-31-1510, et seq., 5-31-1710, et seq. and 5-31-1910, et seq. The park serviced by the agreement would not qualify as a jointly developed industrial park under Article VIII, Section 13(D) of the State Constitution.

2. The five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from the exemption by other statutory authority.

3. Neither Article VIII, Section 13(D) of the State Constitution nor Section 4-1-170 requires that school districts receive fees from jointly developed industrial parks at the same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions.

4. A lawful contract by county officials will normally be sustained by the court regardless of the fact such officials may have made a bad bargain.

TO: Mr. John C. Hankinson, Jr.
Deputy Director
South Carolina State Development Board

FROM: Ronald W. Urban RWU
Assistant Attorney General

QUESTIONS:

1. Can a city or town enter into a joint venture to develop an industrial/business park with an adjacent county? If so, does this joint venture qualify the improved land in question as a regional joint industrial/business park as provided for in the Constitution?

2. If fees are collected on a joint venture in lieu of taxes, does the five year tax exemption for new investments apply to the fees?

3. Will the county or counties be required to fund public education from the fees at the same percentage as general taxes are to school taxes in the district in which the park is located?

4. If Fairfield County enters into an agreement to pay Great Falls 25% of any increased revenue from the park development in Fairfield County in exchange for sewer service for the park, does Fairfield County open itself to litigation from a citizen who might show that the 25% exceeds the value of the service provided?

APPLICABLE LAW: Article VIII, Section 13, South Carolina Constitution; Sections 4-1-170, 4-29-60, 4-29-67, 5-7-10, 5-7-60, 5-31-1510, et seq., 5-31-1710, et seq., 5-31-1910, et seq. and 12-37-220, Code of Laws of South Carolina, 1976, as amended.

DISCUSSION:

Question 1: The first question asks whether a municipality can enter into a joint venture with an adjacent county for the development of an industrial park to be located in such county. It is understood the venture would obligate the municipality to furnish utility services to the park for a fee. This question also asks whether a venture of this nature would qualify as a joint industrial park under Article VIII, Section 13(D) of the State Constitution.

Initially, it should be noted municipalities only have such powers as are granted them by the state in their charters or by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E. 586 (1950). These powers may be expressly granted or may be fairly implied from or necessarily incidental to

those powers expressly granted. Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720 (1948). Moreover, in accordance with Section 5-7-10, those powers that are granted must be liberally construed.

Although there is no express authority for municipalities to enter into joint ventures per se, it appears the purpose of the venture here in question could be accomplished by way of Section 5-7-60. Pursuant to that section, a municipality may sell its utility services to entities located outside its corporate limits provided such areas are not within a designated service area of another political subdivision.[1] There is, however, a caveat. Section 5-7-60 must be applied in view of Sections 5-31-1510, et seq., 5-31-1710, et seq., and 5-31-1910, et seq. These provisions limit the manner whereby a municipality can provide certain services outside its corporate limits. Thus, any agreement between a municipality and an adjacent county for utility services must be within the guidelines set forth by these sections.

Additionally, any venture, as described herein between a municipality and a county would not qualify as a jointly developed industrial park under Article VIII, Section 13(D) of the State Constitution. That proviso provides in part:

> "Counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties. . . . "

Nowhere in the above language or in the proviso's remaining language is it stated counties may jointly develop an industrial park with a municipality or other political subdivision. The significance of this should not be overlooked. Constitutions are generally most carefully prepared and it is presumed that the framers had some purpose in inserting every clause and every word, and it is never to be supposed that a single word was inserted without the intention of conveying some meaning. Ravenel v. Dekle, 265 S.C. 364, 218 S.E. 2d 521 (1975). Thus, the reference to counties alone in Article VIII, Section 13(D) is a clear indication our con-

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[1]This restriction may be waived by the political subdivision's governing body.

stitutional framers intended to exclude municipalities and other political subdivisions from the terms of that particular section.[2]

CONCLUSION:

A municipality may agree to sell utility services to an industrial park in an adjacent county provided such agreement is in accordance with the applicable provisions of Sections 5-31-1510, et seq., 5-31-1710, et seq. and 5-31-1910, et seq. The park serviced by the agreement would not qualify as a jointly developed industrial park under Article VIII, Section 13(D) of the State Constitution.

DISCUSSION:

Question 2: Article VIII, Section 13(D) of the Constitution affords special tax treatment to property located in jointly created industrial parks. Its provides as follows:

> ". . . The area comprising the parks and all property having a situs therein is exempt from all ad valorem taxation. The owners or lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for the exemption herein provided. . . ."

The question posed here is whether the property tax exemption found at Section 12-37-220 A (7) should be applied to the fees collected in lieu of taxes. Said statute allows a five year property tax exemption for certain new or expanded manufacturing establishments.

Article VIII, Section 13(D) indicates the amount of fees due must be the same as any taxes that would be owed under normal circumstances. Simply stated, if a manufacturer would

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[2]When the Constitution intends to include municipalities it specifically names them. See the other provisions of Article VIII, Section 13 wherein reference is made to "Counties, incorporated municipalities or other political subdivisions."

ordinarily be entitled to an exemption, then the amount of fees it owes under Article VIII, Section 13(D) must be similarly reduced.

However, this is not to say all new or expanded manufacturing establishments in jointly developed industrial parks are entitled to Section 12-37-220 A (7)'s exemption. Each facility must be separately reviewed to ascertain whether it would otherwise qualify for the exemption. For example, those manufacturers paying fees in lieu of taxes pursuant to Section 4-29-67 are specifically excluded from Section 12-37-220 A (7) by way of Section 4-29-67(D).

CONCLUSION:

The five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from the exemption by other statutory authority.

DISCUSSION:

Question 3. The next question relates to the school districts in which jointly developed industrial parks are located. It concerns whether the fees from such parks must be distributed to the school districts at the same percentage as general taxes are to school taxes.

Article VIII, Section 13(D) does not indicate school districts are to receive any specified percentage of the fees from jointly developed business parks. Rather, the Article merely states:

> ". . . The participating counties shall reduce the agreement to develop and share expenses and revenues of the park to a written instrument which is binding on all participating counties. . . ."

Section 4-1-170 further specifies the details to be included in written agreements between participating counties under Article VIII, Section 13(D). There it is simply stated such agreements must set forth the manner in which revenues are to be distributed to each of the taxing entitles, i.e., public service districts, school districts or municipalities. No requirement as to a certain percentage of distribution is mentioned.

> "By written agreement, counties may develop jointly an industrial or business park with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The written agreement entered into by the participating counties must include provisions which:
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> (1) address sharing expenses of the park;
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> (2) specify by percentage the revenue to be allocated to each county;
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> (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties. . . ." Section 4-1-170. (Emphasis added)

There are, however, other statutory provisions that would affect the amount of fees a school district receives from a jointly developed industrial park. For example, if a park is financed by the Industrial Revenue Bond Act, Section 4-29-60 would require that a school district receive fees in the same amount as would result from taxes levied on the project.[3]

Thus, while neither Article VIII, Section 13(D) nor Section 4-1-170 requires that specified amounts be paid to school districts, such may be required by other statutory provisions. Accordingly, each industrial development must be separately scrutinized to ascertain whether it falls within any of the statutory requirements relating to the percentage of fees payable to school districts.

CONCLUSION:

Question 3. Neither Article VIII, Section 13(D) of the

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[3]Another example of this point is provided at Section 4-29-67(B)(4).

State Constitution nor Section 4-1-170 require that school districts receive fees from jointly developed industrial parks at the same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions.

DISCUSSION:

Question 4. The final question involves a situation where Fairfield County and the town of Great Falls enter into an agreement pursuant to which Great Falls provides sewer services to an industrial park in Fairfield County in exchange for 25% of the fees generated by the park. The question is whether Fairfield County might be subject to legal action if it can be shown 25% of the fees exceeds the value of the services rendered.

Although an action could be brought challenging a contract, like the one between Great Falls and Fairfield County, the general rule indicates such contract would withstand the action regardless of the fact the county may have made a bad bargain.[4]

> "It is a general rule that officers of a municipal corporation, in the letting of municipal contracts, perform not merely ministerial duties but duties of a judicial and discretionary nature, and that courts, in the absence of fraud or a palpable abuse of discretion, have no power to control their action. It has been said that if a contract is within the power of a municipal corporation, and has been duly entered into, the courts can consider only whether the constitution permits the contract in question; questions of whether the contract is wise or whether its terms are advantageous for the corporation and the public are solely for the municipal officers. On the other hand, a municipal contract will generally be declared void if there has been an abuse of power or discre-

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[4]This assumes the contract itself is lawful and in accordance with applicable statutory provisions.

> tion on the part of the municipal authorities executing it, or it is tainted with fraud, or is inequitable or unreasonable. And the courts have power to prevent the municipal authorities from doing an illegal act." 56 Am.Jur.2d, Municipal Corporations, Etc., Section 495, p. 546.

CONCLUSION:

A lawful contract by county officials will normally be sustained by the court regardless of the fact such officials may have made a bad bargain.

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