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November 8, 1990

The Honorable Jackson V. Gregory
Member, House of Representatives
522C Blatt Building
Columbia, South Carolina 29211

Dear Representative Gregory:

I have been requested to respond to your letter to Attorney General Medlock dated October 11, 1990. In your letter, you requested an interpretation of the method of funding for the Economic Development Account prescribed by South Carolina Code Ann. § 12-27-1270 (1976). The pertinent language of this statute states the following:

The first ten million dollars generated from the tax levied in § 12-27-1210, 12-27-1220, 12-27-1230 and 12-27-1240 must be segregated in a separate account for economic development ... All funds devoted to the Economic Development Account are to remain in the fund if not expended in the previous fiscal year. Annually, funds from the tax as levied in § 12-27-1210 must be deposited to replenish the Economic Development Account. The total in the account at no time may exceed fifteen million dollars. (Emphasis added).

The Legislative Audit Council's 1990 Sunset Review of the South Carolina Coordinating Council for Economic Development found that two different methods have been used to fund the account. 1/ The

1/ "Method One" described an initial deposit of 10 million dollars by the Highway Department into the Economic Development Account. After the first year's expenditures, the Highway Department replenished the account based on those prior year expenditures. It also deposited an additional 5 million dollars into the account.

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Audit Council also proposed a third method for funding the account. In addition, the Audit Council concluded that "[s]tate law is not clear regarding the required method for funding the Economic Development Account" and further stated that

the General Assembly may wish to review the method currently used (method two) to fund the Economic Development Account. If the General Assembly determines that this method is in the state's best interest, it may wish to consider amending state law to clarify the General Assembly's intent.

In view of these three interpretations, you seek advice as to the correct interpretation of § 12-27-1270. While it may be argued that "Method One" complies with the literal terms of the statute, see, Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966), there is also competing rule of statutory construction which must be considered here. As our Supreme Court stated in Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 540, 230 S.E.2d 219,

[t]he construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.

1/ Continued from Page 1

Under "Method Two" the Coordinating Council requested that \$10 million dollars be deposited into the account each year up to the 15 million dollar limit. The Coordinating Council also requested that the 15 million dollar limit be defined as the account balance minus funds which have been approved or committed for road construction projects, but not yet expended.

The Audit Council proposed a "Method Three." Under that method, there would be no funding mechanism enabling the Account to exceed 10 million dollars because the law only authorizes subsequent deposits to replenish the account. In addition, there "would be no authority for annual deposits of \$10 million dollars without regard to prior year's expenditures. Finally, there would be no authority for subtracting unexpended funds from the account balance when determining compliance with the \$15 million dollar limit."

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We cannot say that a court would necessarily conclude that a cogent reason for overturning the Coordinating Council's accounting methodology as being in conflict with Section 12-27-1270 exists in this instance. Section 12-27-1270 does not specify a particular accounting methodology for calculating the \$15 million limit which the statute mandates. As noted above, that the statute is ambiguous is indicated by the fact that at least three separate accounting methods have been suggested. As is generally recognized, the Legislature may leave to "the discretion of the administrative body the selection of appropriate methods and the other administrative details to be employed in accomplishing the statutory purpose." 73 C.J.S. Administrative Law and Procedure, § 28. While a court might interpret the statute differently if not confronted with the administrative interpretation of the Coordinating Council, such speculation is irrelevant, since the courts would be constrained to defer to a reasonable construction. See Op. Atty. Gen., May 1, 1990. We are advised that an accounting and reporting methodology that designates that funds previously dedicated for projects as encumbered is generally acceptable. Accordingly, we cannot say that a court would conclude that the Coordinating Council's interpretation would be overturned pursuant to the legal standards enunciated in Faile v. South Carolina Employment Security Commission, supra. Nevertheless, as the Audit Council has suggested, the General Assembly may wish to give consideration to the clarification of § 12-27-1270 by setting forth a particular accounting method.

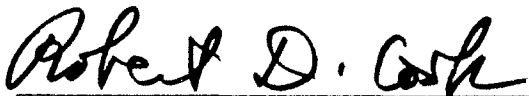
Sincerely,



Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED BY:



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