

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

October 4, 1989

SUBJECT: Taxation and Revenue - Allocation and application of the payment "in lieu of taxes" provided by Section 4-29-67.

SYLLABUS: A portion of the payment in lieu of taxes required by Section 4-29-67 should be allocated to the bond debt of a school district or other political entity.

TO: Honorable Claudia Lee Hendrix
Lexington County Auditor

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Must a portion of the in lieu of tax payment made pursuant to Section 4-29-67 be allocated and applied to bond debt of a school district or political entity?

APPLICABLE LAW: Section 4-29-67, Code of Laws of South Carolina, 1976.

DISCUSSION:

The provision was adopted by Act 487, Acts of 1988, as an amendment to the Industrial Revenue Bond Act. That act authorized agreements between counties and industries whereby the county would own a manufacturing facility and lease the same to the industry. The industry would be required to make payments to the county in amounts sufficient to meet the debt for the acquisition of the facility, plus a sum equal to the amount of taxes that would be due had the county-owned property been subject to taxation.

The 1988 act modifies the amount of the last mentioned payment and allows its reduction within certain prescribed limits. The question is whether any portion of that payment is to be allocated to bond debt. The pertinent language of Section 4-29-60 is that:

"Each financing agreement in the form of a lease shall contain a provision requiring the industry to make payments

October 4, 1989

. . . in lieu of taxes, in such amounts as would result from taxes levied on the project . . . if the project were owned by the industry . . ."

Our courts concluded that this payment was not a tax but a charge for the use of the facility. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 and Powell v. Chapman, 260 S.C. 516, 197 S.E.2d 287.

The applicable language of Section 4-29-67 is that:

"Distribution of the payment in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable. Millage rates must be determined for school and other purposes as if the property were taxable."

We are informed that a portion of the in lieu of payment provided by Section 4-29-60 has consistently been applied to bond debt. Such administrative interpretation is entitled to weight and is not to be disregarded without cogent reason. Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682. We are further informed that the millage for bond debt of the school districts and other entities is included in the formula used to calculate the amount of the in lieu of payment provided by Section 4-29-67.

The statute language must be given its plain meaning. (For cases see 17 S.C.D., Statutes, Key 188, et seq.) Here the legislative mandate is that the payment must be distributed "in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable." It cannot be disputed that the property, if taxable, would have been subject to the bond debt levy. Likewise, the levy for bond debt is for a school or other purpose. Accordingly, a portion of the payment must be distributed to the bond debt of the school district or the bond debt of the other political entities.

CONCLUSION:

A portion of the payment in lieu of taxes required by Section 4-29-67 should be allocated to the bond debt of a school district or other political entity.

JLAJr:wcg