ALAN WILSON
ATTORNEY GENERAL

February 28, 2014

The Honorable B.R. Skelton
Representative, District No. 3
2962 Walhalla Highway
Six Mile, SC 29682

Dear Representative Skelton:

By your letter dated November 22, 2013, you have forwarded a constituent request asking whether a municipality may "legally impose a storm water fee on its' citizens under federal and/or state law?" As explained below, we believe that it can.

**Analysis**

The Stormwater Management[1] and Sediment Reduction Act was passed in 1991 and now occupies Sections 48-14-10 through 48-14-170 of the South Carolina Code. S.C. Code Ann. § 48-14-10 (2008) *et. seq.* The purpose of the Act is "to reduce the adverse effects of stormwater runoff and sediment and to safeguard property and the public welfare by strengthening and making uniform the existing stormwater management and sediment control program." Act No. 51, 1991 Acts 167.

Section 48-14-120(C) of the Code authorizes local governments to establish a stormwater utility[2] and further permits local governments to fund such utilities "through the establishment of a fee system or tax assessment that must be reasonable and equitable." S.C. Code Ann. § 48-14-120(C) (2008). In State ex rel. Condon v. City of Charleston, 334 S.C. 246, 513 S.E.2d 97 (1999) our Supreme Court, interpreting Section 48-14-120(C), explained "[t]he plain, ordinary, and unambiguous language of the statute allows local governments to fund the utility through either a fee or an assessment." 334 S.C. at 248, 513 S.E.2d at 98 (1999) (citing S.C. Code Ann.

[1] Stormwater management is defined as a system which reduces "pollutants that might otherwise be carried by stormwater runoff." S.C. Code Ann. § 48-14-20(11) (2008).

[2] A stormwater utility is defined as "an administrative organization that has been created for the purposes of planning, designing, constructing, and maintaining stormwater management, sediment control, and flood control programs and projects." S.C. Code Ann. § 48-14-20(14) (2008).

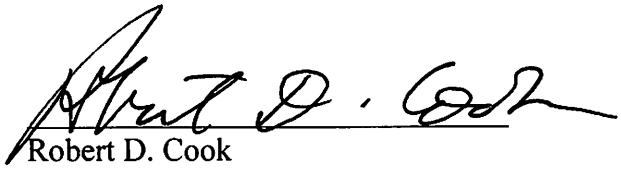
§ 48-14-120(C) (1998 Supp.)). As with any statute or legislative act, the Stormwater and Sediment Reduction Act is presumed to be constitutional and will be construed in a manner such that, if at all possible, the Act will be considered valid. See Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 451, 633 S.E.2d 482, 486 (2006) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid.").

Understanding this, we believe a municipality may legally impose a stormwater fee on its' citizens so long as such a fee is reasonable and equitable as required by the terms of Section 48-14-120(C). As detailed above, our Supreme Court, in City of Charleston, has already interpreted Section 48-14-120(C) as expressly authorizing a municipality to impose such a fee. 334 S.C. at 248, 513 S.E.2d at 98. Accordingly, it is the opinion of this Office that a municipality may legally impose a stormwater fee on its' citizens so long as such a fee complies with Section 48-14-120(C)'s requirement that the fee be "reasonable and equitable."

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General