ALAN WILSON
ATTORNEY GENERAL

June 2, 2014

The Honorable Daniel M. Gregory
Charleston County Delinquent Tax Collector
4045 Bridge View Drive
North Charleston, South Carolina 29405-7464

Dear Tax Collector Gregory:

Attorney General Alan Wilson has referred your letter dated January 31, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

As quoted from your letter: *"Are Delinquent Tax Collectors in the State allowed to sell property in a tax sale and include assessments, and/or fees, etc. along with solely the delinquent ad valorem tax amounts on the property if those fees and assessments were originally included on the tax bill when the bills were first issued by the County Auditor to be collected at that time prior to delinquency status and if after the tax bill goes delinquent can a Tax Collector sell the property at a tax sale with these fees included and then require the taxpayer to redeem their property at an amount that includes these fees on the delinquent tax bill that was sold at tax sale in order to fully redeem their property as allowed by statute during the one year redemption period for their property? ... Are fees considered to be assessments or is the definition as it pertains to our tax bills that they are separate unto themselves as far as their meaning? ... I have heard of not being able to force collect a fee for a property through a tax sale when no ad valorem property tax is included on a tax bill or is my statement without merit?"*

Issues (It is this Office's understanding you are asking):

1) May Delinquent Tax Collectors include fees such as stormwater[1] runoff and solid waste fees as "any applicable fees" on the county tax bill pursuant to South Carolina Code § 12-43-350(9)?
2) May a fee such as a stormwater runoff or solid waste fee be collected through a tax sale when no ad valorem property tax is included on a tax bill?

Law/Analysis:
South Carolina Code Section 12-43-350 states that:

> Affected political subdivisions must use a tax bill for real property that contains standard information as follows:
> (1) tax year;
> (2) tax map number;
> (3) property location;

[1] While "storm water" often is spelled as two words, the South Carolina Legislature has listed it as one word in its statutes, which is why it is spelled as one word in this opinion. See, e.g., S.C. Code § 48-14-140.

> (4) appraised value, taxable;
> (5) tax amount;
> (6) state homestead tax exemption pursuant to Section 12-37-250, if applicable;
> (7) state homestead tax exemption pursuant to Section 12-37-220(B)(47) and the estimated value of the exemption and the amount of any credit against the property tax liability for county operations on owner-occupied residential property attributable to an excess balance in the Homestead Exemption Fund;
> (8) local option sales tax credit, if applicable;
> **(9) any applicable fees;**
> (10) total tax due;
> (11) tax due with penalties and applicable dates;
> (12) prior year amount paid--only required to be shown if assessment is unchanged from prior year, except during reassessment years, in which case all properties must show the prior year tax amount.
>
> The information required pursuant to this section must be contained in a "boxed" area measuring at least three inches square placed on the right side of the tax bill.

South Carolina Code § 12-43-350 (1976 Code, as amended) (emphasis added).[2]

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Based on the plain language of S.C. Code Section 12-43-350, it would appear as long as the specific fees are "applicable fees," they could appear on the tax bill. However, "applicable fees" do not appear to be defined for this statute.[3] Thus, we will not look to other statutes to determine the meaning of "applicable fees" but will look to a clear and unambiguous meaning. Black's Law Dictionary Eighth edition did not have a definition for "applicable." However, it did define "fee" as:

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[2] Please note 2013 S.C. H.B. 4407 attempts to modify this statute, among other statutes.
[3] However, S.C. Code § 12-49-950 and § 12-51-55 concerning tax sales and the Forfeited Land Commission defines assessments in each of these statutes.

1. A charge for labor or services, esp. professional services.
...

Black's Law Dictionary 690 (Bryan A. Garner ed., 9th ed., West 2009). The American College Dictionary defines applicable as "that can be applied; appropriate." The American Heritage College Dictionary 66 (3rd ed., Houghton Mifflin Co. 1997). Based on a reasonable interpretation of these terms, it would seem a charge for services would be consistent with the definition of a "fee" and that it would be "applicable" in that a municipality is authorized to contract with a county for the county to collect the municipality's taxes. S.C. Code § 12-51-170. It is reasonable to think if the Legislature intended to limit the term, it would have expressly done so.

Moreover, this Office has issued numerous opinions on similar questions. In June of 2012 this Office issued an opinion on whether costs for deteriorating structures and overgrown lots charged by a municipality could be added to the annual tax bill issued by the county and then sold at a tax sale if unpaid pursuant to county ordinance. Quoting from that opinion:

> *As the final clause of section 5-7-80 indicates, the Town may provide by ordinance that costs incurred pursuant to that section will be "collectable in the same manner as municipal taxes." Likewise, section 31-15-30 provides that the costs incurred thereunder "shall be collectible in the same manner as municipal taxes." We have interpreted this language as authority for a municipality to place such costs "onto municipal tax notices." Letter to J. William Taylor, Op. S.C. Att'y Gen. (Dec. 17, 2003). However, if "a dwelling is removed or demolished" pursuant to section 31-15-10 et seq., the materials of the dwelling must be sold and the proceeds credited "against the cost of the removal or demolition." S.C. Code Ann. § 31-15-90.*
>
> *In a recent opinion of this Office, we discussed the ability of a municipality to sell real property in response to a taxpayer's failure to pay a municipal fee that was included on a property tax bill, concluding as follows:*
>
> > *[A] court likely would find municipal fees that constitute a lien on real property and are collectable in the same manner as taxes may be enforced by foreclosure or by a delinquent tax sale held pursuant to title 12, chapter 51 of the South Carolina Code.*
>
> *Letter to The Honorable Bill Bowers, Op. S.C. Att'y Gen. (Apr. 24, 2012); see also S.C. Code Ann. § 5-7-300 (2004 & Supp. 2011) (concerning collection of delinquent municipal taxes). ...*
>
> *As to the involvement of the county, we have opined previously that whether a county must collect cleanup costs of this kind on behalf of a municipality will depend upon the terms of any relevant contract between the municipality and the county. E.g., Letter to C. Anthony Harris, Jr., Op. S.C. Att'y Gen. (Mar. 26, 2004) ("[I]t remains our opinion that the County would not be obligated to collect costs incurred by a municipality for the removal of trash and the demolition of houses absent a specific agreement to that effect between the County and the Town.").*

Op. S.C. Atty. Gen., 2012 WL 2586918 (June 22, 2012). As referenced above, the April 24, 2012 opinion concluded that municipalities were not required to accept a partial payment that did not include fees on a tax bill and they could conduct a sale of the property for unpaid fees on the tax bill pursuant to Title 12, chapter 51 depending on the statute that authorized the fee. Op. S.C. Atty. Gen., 2012 WL 1649763 (April 24, 2012). A 2011 opinion stated (among other things) that a fee for a service may be issued on a tax bill as long as notice is given pursuant to S.C. Code § 6-1-80 if the fee replaces service previously funded by ad valorem taxes as long as they are actual fees and not taxes (and thus would not affect the millage rate limit). Op. S.C. Atty. Gen., 2011 WL 3918181 (August 25, 2011). This Office wrote an opinion in 2007 where this Office found a county was authorized to impose a fire and rescue protection fee on the real property tax bills pursuant to S.C. Code § 4-21-10, which authorizes a "special tax, fee or service charge" to be levied against property or occupants. Op. S.C. Atty. Gen., 2007 WL 3317622 (October 22, 2007) (quoting S.C. Code § 4-21-10). A 2004 opinion concluded (among other things) that S.C. Code § 31-15-330(6) authorized a demolition fee by a municipality to be enforceable through foreclosure or other action consistent with nonpayment of taxes but that a tax receipt must be issued if all taxes were paid. Op. S.C. Atty. Gen., 2004 WL 113639 (January 13, 2004). Also in 2004 this Office answered a question of whether a county council could send two tax bills (one for county operations and one for school operations) instead of one. In that opinion this Office stated the literal language read "a" tax bill, which we concluded meant one bill. Op. S.C. Atty. Gen., 2004 WL 2247472 (September 16, 2004). A 2003 opinion stated that this Office believed S.C. Code § 5-7-80 authorized a city to collect the costs in the same manner and the same form as it collects municipal taxes. Op. S.C. Atty. Gen., 2003 WL 23138218 (December 17, 2003). A 1998 opinion by this Office stated that S.C. Code § 31-15-20(6) would give a city authority to collect costs pursuant to the statute in the same manner as it collects ad valorem property taxes pursuant to S.C. Code § 5-7-300. Op. S.C. Atty. Gen., 1998 WL 196452 (March 17, 1998).[4]

This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Additionally, "[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views [ex]pressed therein were consistent with the legislative intent." Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)). Moreover, as this Office stated:

> [The Supreme Court of South Carolina] has recognized that an opinion of the Attorney General, while not binding upon the courts, is 'persuasive.' *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604 (2011). An Attorney General's opinion "should not be disregarded without cogent reason." *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n.1 (Ct.App. 1984).

[4] While there are numerous previous opinions and other sources, these are some of the ones we thought you may find most helpful. Please note in an opinion dated February 15, 1989 this Office determined based on the case law at that time that a county collecting taxes on behalf of a municipality pursuant to a contract with a municipality would not include the collection of other charges pursuant to S.C. Code § 5-7-80 unless specifically contracted for with the municipality. Op. S.C. Atty. Gen., 1989 WL (February 15, 1989); see, also, Op. S.C. Atty. Gen., 2001 WL 564578 (March 2, 2001) (opining that a county could collect both municipal taxes and costs, depending on the specific terms of the agreement with the municipality).

Op. S.C. Atty. Gen., 2012 WL 2867807 (June 29, 2012).

2) A court would likely find a fee such as a stormwater runoff fee or a solid waste user fee would not be able to be collected by means of a tax sale when no ad valorem property tax is included on the tax bill unless authorized pursuant to statute. Each fee would need to be analyzed on a case-by-case basis depending on the authority for the fee.[5] For example, a court may not find a county tax collector could force a tax sale of property based on a stormwater fee pursuant to the authority given by statute and regulation concerning the fee. For a violation of the Stormwater Management and Sediment Reduction Act, S.C. Code Section 48-14-140 authorizes a civil penalty of not more than one thousand dollars, and, if not paid within thirty days, authorizes a civil action in circuit court to recover the penalty.[6] Neither give any direct authorization for a tax sale.[7] A court will likely find a fee cannot be extended beyond its statutory or regulatory authority. As stated above, by statute a municipality may contract with a county for the county to collect the municipality's taxes. S.C. Code § 12-51-170; see, also, S.C. Code § 5-7-300 (authorizing the methods of collection for delinquent ad valorem municipal taxes). Additionally, Article VIII Section 13 of the South Carolina Constitution authorizes the joint administration of government for any function, exercise of power, or sharing of cost. See, e.g., Op. S.C. Atty. Gen., 1979 WL 42863 (March 14, 1979) (opining, among other things, that while a county may collect a city's tax by contract, a county treasurer would have no greater rights in collecting the city tax than provided under the law); S.C. Code § 4-9-41 (authorizing the joint administration of any function and powers by a county and municipality or other political subdivision, as authorized in S.C. Const. Art. VIII, § 13). As quoted above, a 2012 opinion concluded that municipalities could conduct a sale of the property for unpaid fees on the tax bill pursuant to Title 12, chapter 51 depending on the statute that authorized the fee. Op. S.C. Atty. Gen., 2012 WL 1649763 (April 24, 2012). Quoting from that opinion:

> *Your request does not specify the nature of the fees with which you are concerned. Thus, we cannot determine whether such fees are secured by a lien on real property and/or are collectible in the same manner as property taxes. See generally Letter to Timothy H. Pogue, Op. S.C. Att'y Gen. (Nov. 20, 2000) (opining that it is questionable whether a local governing body may impose a lien by ordinance without specific statutory authorization therefor). However, a court likely would find municipal fees that constitute a lien on real property and are collectable in the same manner as taxes may be enforced by foreclosure or by a delinquent tax sale held pursuant to title 12, chapter 51 of the South Carolina Code. See Town of Cheraw, 184 S.C. at 82-83, 191 S.E. at 834-35 (quoted above); Letter to Jonathan M. Robinson, supra ("[I]t appears the demolition fee is enforceable either through the same procedure as exists for the non-payment of taxes or through a foreclosure action."). Moreover, Town of Cheraw suggests that a fee secured by a lien might be enforceable by foreclosure even if it is not enforceable using the procedure for delinquent tax sales.*

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[5] This Office has written numerous opinions concerning specific fees. See, e.g., Op. S.C. Atty. Gen., 2011 WL 4592371 (September 23, 2011) (regarding the Forfeited Land Commission and paying assessments and fees pursuant to a tax sale).

[6] See also S.C. Code of Regulations R. 72-300, 72-301, 72-306, 72-315 et al. regarding stormwater fees.

[7] However, S.C. Code § 48-14-60 gives authority to delegate stormwater management and sediment control programs to a local government or conservation district only pursuant to regulations by the department. S.C. Code § 48-14-120 gives local governments the authority to establish a stormwater utility and to establish fees or taxes to fund it. As an aside, there are many other sources discussing stormwater fees. See, e.g., Condon v. City of Charleston, 334 S.C. 246, 513 S.E.2d 97 (1999); Op. S.C. Atty. Gen., 2014 WL 1398600 (February 28, 2014), et al.

Id. As the 2012 opinion referenced, the Town of Cheraw case stated (among other things) concerning a municipal assessment for improvements:

> It is recognized even in tax cases (where the holding generally has been that the statutory method of enforcement is exclusive, because the tax is created and the enforcement remedy is provided by the same general act) that the public authorities may resort to a suit in equity where the nature of the particular case renders this necessary. 61 C.J. 1053, 1054.
> The present is a particularly apt case for the application of that doctrine.
> ...
> Our Supreme Court has held that a court of equity can adjudicate the validity of a paving assessment lien in a suit brought for that purpose. Sutton v. Town of Fort Mill, supra. That is not true of a tax, where the statutory requirement is that a tax which is alleged to be illegal must be paid under protest, and recovered by suit, no injunctive remedy being available (Code, § 2548). Thus we have a definite adjudication of another phase of tax enforcement procedure which has been held to be inapplicable to paving assessment liens. And, if a court of equity can entertain jurisdiction of a suit to test the validity of such a lien, why may it not also entertain a suit to enforce collection of the lien?

Town of Cheraw v. Turnage, 184 S.C. 76, 191 S.E. 831, 836, 837 (1937). Furthermore, this Office stated in a 2000 opinion concerning an ordinance placing a lien for unpaid solid waste fees:

> *More specifically, S.C. Code Ann. § 44-55-1220 authorizes the governing body of a county "which engages in the collection and disposal of solid waste" to enact "such rules and regulations as it may deem necessary to carry out the functions authorized by this article." Finally, the South Carolina Supreme Court has noted that Section 4-9-30(5) grants counties the power to assess service charges for solid waste disposal. Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996). Clearly, the counties are empowered to pass ordinances concerning fees for solid waste collection.*
> ...
> *As a general rule, "it is within the power of the legislature, subject to constitutional limitations, to provide for liens to secure the payment of debts and other obligations, and legislative authority exists to create by statute a right of lien where no such right existed at common law." 51 AM. JUR. 2D Liens § 36 at 174 (1970). Furthermore, in a previous opinion of this Office we questioned a county's authority to impose a lien for service charges for garbage collection, citing the following:*
>
> > *Special assessments are generally secured by a lien on the property benefitted by the improvement by virtue of statute or municipal charter, and the constitutionality of such laws has been upheld. But the municipality as such has no lien for special assessments levied upon property within its corporate limits. Taxes are not a lien unless expressly made so by statute: and special assessments stand on the same footing. Municipal corporations have no power to create liens by ordinance or otherwise unless such power has been expressly conferred upon them.*

See Op. Atty. Gen. Jan. 17, 1977 (citing 14 MCQUILLIN § 38.161 at 385 (now reworded slightly and found at 470)). This authority suggests that in the absence of a statute specifically enabling counties to impose a lien for charges for the collection of solid waste, the county cannot create the lien for itself by ordinance alone.

This reasoning increases the concerns that the ordinance fails the second part of the two part test for validity; namely, it is inconsistent with the State's Constitution or general law. By placing the lien upon real property in the same manner as the lien on property taxes, the county changes its status as a creditor of the property owner. The county, by likening the lien to the property tax lien, gives itself superpriority over other creditors. State statute allows this in some instances. See, e.g., S.C. CODE ANN. § 6-11-170 (authorizing a lien for public service districts for unpaid charges); § 5-31-2040 (municipalities may enforce lien for sewer charges). It appears, however, that the General Assembly has not provided counties with similar authority in the collection of solid waste disposal fees. Thus, the creation of a lien by ordinance when not expressly authorized by the General Assembly could jeopardize the due process rights of the property owner and other creditors.

Finally, S.C. Code Ann. § 4-9-30(14) provides authority to a county:

> *to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts. Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates' courts of the county. County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction...."*

As stated, the county may not enact an ordinance in conflict with general law. The general law as set forth above provides the means and procedures the county is to follow to enforce the payment of the charge for the collection of garbage. A sale of the property in the same manner as a sale for delinquent taxes would contradict this provision.

In sum, although an ordinance is entitled to a presumption of validity, we express concern that this particular ordinance oversteps the boundaries of the county's authority. Because of the potential to displace the rights of property owners and creditors, the creation of a lien requires the approval of the General Assembly. In the instant case, a county appears to have no express authority to impose a lien for the collection of solid waste disposal fees. Indeed, the county is directed to seek remedy through the magistrates courts or seek injunctive relief in a court of competent jurisdiction. Until the courts speak further, it is the opinion of this Office that the Marion County ordinance is of questionable validity. In the exercise of caution, the county should to pursue other remedies. For example, the county could first seek a judgment against the property owner which could result in a lien upon the property. Be advised, however, that this is an undecided area of law in South Carolina. There

appears to be no case law directly on point. You may wish to seek a declaratory judgment to resolve the issue with finality.

Op. S.C. Atty. Gen., 2000 WL 1803592 (November 20, 2000) (emphasis added). Additionally, this Office would caution, as you know, the courts in South Carolina have stated that tax sales must be held in "strict compliance" with the requirements under the law. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003) (citing Ryan Inv. Co. v. Richland County, 335 S.C. 392, 394, 517 S.E.2d 692, 693 (1999) (citing Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980)). And cases have held actual notice of a tax sale does not even suffice if the statute was not strictly complied with. Id. (citing Ryan Inv. Co.). A tax sale will be voided if a court finds notice of a tax sale was not given to the proper party. Id. (citing Rives v. Bulsa, 325 S.C. 287, 478 S.E.2d 878 (Ct. App. 1996)). [8]

Conclusion: Considering all of the above, this Office believes a court will find that pursuant to South Carolina Code Section 12-43-350 Delinquent Tax Collectors may include fees such as stormwater runoff and solid waste fees as "any applicable fees" on the county tax bill[9] and that even when no ad valorem property tax is included on a tax bill such fees may be collected through a tax sale only where there is specific statutory authorization. Nevertheless, there are many other sources and authorities you may want to refer to for a further analysis. For a binding conclusion, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law can interpret statutes. S.C. Code § 15-53-20, et al. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

[8] Please note this opinion does not address priority of liens. See, e.g., Op. S.C. Atty. Gen., 1977 WL 24740 (December 21, 1977).

[9] Presuming there is authorization and agreement pursuant to contract or other agreement with the county and/or municipality.