ALAN WILSON
ATTORNEY GENERAL

June 13, 2014

The Honorable Bill Woolsey
Mayor, Town of James Island
P. O. Box 12240
James Island, South Carolina 29422

Dear Mayor Woolsey:

Attorney General Alan Wilson has referred your letters dated February 3, 2014 and March 24, 2014 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letters):

1) "Can the James Island Public Service District legally receive funds paid by the Town of James Island in exchange for the provision of services for Town residents, even if the funds paid by the Town were funds from the local option sales tax ["LOST"] legally received by the Town from the State Treasurer?
2) Can the James Island Public Service District, and other public bodies, legally receive funds directly from the County Treasurer, if those funds were paid to the County Treasurer by the Town of James Island from sources including partially or wholly, local option sales tax legally received by the Town?
3) Does the statutory provision of [S.C. Code §] 4-10-10 preclude a municipality from coming to an agreement with a county whereby a local option sales tax credit reduces the amount of tax paid to the county by the taxpayers in the jurisdiction of the municipality, with the municipality compensating the county with funds it received from the property tax credit fund?
4) Does the statutory provisions of [S.C. Code §] 4-10-10 preclude a municipality from coming to an agreement with a special purpose district whereby a local option sales tax credit reduces the amount of tax paid to the special purpose district by the taxpayers in the jurisdiction of the municipality, with the municipality compensating the special purpose district with funds it received from the property tax credit fund?"

As you state in your letter to this Office dated March 24, 2014:

> *... we instead considered Charleston County's general government millage. The County Auditor said that a resolution by County Council would be necessary for him to go forward. County Council's Finance Committee approved the concept pending legal review.*

To review the proposal in more detail, the Town would deposit with the County Treasurer the Local Option Sales Tax Funds that it had already budgeted and received during the fiscal year. Currently that would be the 2013-2014 fiscal year and we would make the deposit at the end of our fiscal year, around June 30, 2014. We currently have $720,000 budgeted. The County Auditor would use that amount to calculate a local option sales tax credit factor. This would be used to calculate a local option sales tax credit to appear on all tax bills in the Town's tax district. The amount of the credit would appear at the top of the tax bill on its own line with the other credits. The millage for general county government would appear on its line, but the dollar amount billed would be reduced by the Town's LOST credit. It is also reduced by the County's LOST credit. The total amount of the bill for each taxpayer in the Town would be reduced by the amount of the credit. As each tax bill is processed, the Town's deposit with the County Treasurer would be debited by the amount of the credit on that bill and the County's general government account would be credited.

The end result is that the taxpayers in the Town's tax district will pay less tax and the County's general government fund would receive the same amount of money. The reduction in taxes paid by the Town's taxpayers would come from monies the Town received from the Property Tax Credit Fund.

The Town's view is that this is authorized by the South Carolina Constitution Article VIII Section 13 states,
"(A) Any county, incorporated municipality or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof."
We believe that this gives broad authority to the Town and the County to make arrangements that we find beneficial, unless it is specifically prohibited.

The County's legal counsel has raised concerns regarding the details of the LOST statutes.
The first concern is that the revenue allocated to the Property Tax Credit Fund, as provided in Section 4-10-90, must be distributed to the county and the municipalities in the county area as follows:

1) *Sixty-seven percent to the county*
2) *Thirty-three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.*

The concern is that by sending the money back through the county the percentages will change, and that percentages "must" remain consistent.
The Town's view is that this provision applies to the South Carolina Department of Revenue. No part of the proposal instructs the SCDOR to change how much money it distributes to Charleston County, the Town of James Island, or any other municipality. The Town and the County are coming to an agreement as to how the Town uses the funds it receives according to the formula described by the statute.

The second concern relates to the following provision:

> *"(B) All of the revenue received by a county and municipality from the Property Tax Credit Fund must be used to provide a credit against the property tax liability of the taxpayer's in the county and municipality..."*

The concern here is that credits are only available to be used against the tax liability that exists in the county and in the municipality and on James Island there is no tax liability in the municipality.
The Town's view is that because it has no municipal property tax, the funds it receives for Property Tax Credit Fund are available for any public purpose. While the Town could use the funds to directly pay for additional public services or else pay Charleston County for additional public services, using them instead to provide additional relief against property taxes levied by other jurisdictions is also a public purpose.

Referring again to the South Carolina Constitution, the Town and County have broad authority to come to an agreement that would allow the Town to achieve that public purpose. We certainly think that it is helpful that providing property tax relief is very consistent with the intention of the statute.

It has been the practice since the institution of the Local Option Sales Tax for municipalities with a millage so low that the amount of the credit is greater than the amount of the municipal tax liability to use the remainder of the money received from the Property Tax Credit Fund for any public purpose. There is no regulation or policy for returning "excess" funds to the SCDOR. In practice, this mostly has applied to municipalities that have no property tax millage at all. The common sense view has been that there is no legal obligation for a municipality to use funds to provide relief for a municipal property tax that doesn't exist. There have been such municipalities since the Local Option Sales Tax was first passed. In Charleston County, along with the Town of James Island, Kiawah, Seabrook, Rockville, Hollywood, Meggett, end Ravenel have no property tax millage and receive funds from the Property Tax Credit fund.

While it would be possible to imagine that the courts would read into the statute that SCDOR should only distribute funds in proportion to the population of those municipalities with a property tax, *that would still leave the question of those actual situations where the millage was sufficiently low that some taxpayer liabilities were zeroed out. Adding provisions so that a municipality must track by how much its tax revenue is reduced by the credit and then only keep that part of the local option sales tax revenues from the Property Tax Credit Fund needed to compensate for that reduction, and mandating a new requirement that those excess funds be returned, would surely be an extreme example of legislating from the bench.*

Further, this would obviously punish frugal municipalities that had low (or no) property tax. All citizens of a county pay the local option sales tax. It is collected in all of the municipalities. Should the full benefit only go to municipalities with a sufficiently high property tax? Rewarding high property taxes is unlikely to have been the intention of the legislators voting for this bill or the citizens passing Local Option Sales Tax referenda.

Still further, the response of any reasonable municipality would be to raise municipal property millage until it had received the full benefit of the local option sales tax. The municipality could fund additional programs and the taxpayers would pay nothing more. This would bring to the fore the issue of the relationship between the millage cap and a municipality with no current millage.

The long standing practice of letting municipalities use the local option sales tax revenues they receive from the property tax credit fund for any public purpose after they have applied the legally required credit to their own municipal millage is easy to understand given all of these

complications. Any change in current practice needs to be done by the political branches, and not by judicial fiat.

Law/Analysis:
This Office stated in an opinion to you dated April 28, 2014:

> *Our state legislature has chosen the Department of Revenue to administer and collect the local sales tax. S.C. Code § 4-10-90. As this Office has previously opined, "[i]t is this Office's longstanding policy ... to defer to [the interpretation of] the administrative agency charged with the regulation [of] ... the subject matter." Ops. S.C. Atty. Gen., 2013 WL 4497164 (August 9, 2013); 2013 WL 4873939 (September 5, 2013). As this Office stated in a previous opinion:*
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> > *[A]s a general matter, it is well recognized that administrative agencies possess discretion in the area of effectuating the policy established by the Legislature in the agency's governing law. As our Supreme Court has recognized, 'construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.' Op. S.C. Atty. Gen., [1997 WL 783366] October 20, 1997 quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C.Cir. 1984). Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, we defer to that agency's construction.*
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> *Op. S.C. Atty. Gen., 2006 WL 269609 (January 20, 2006). Therefore, in regards to use of funds from a local option sales tax, this Office would defer to the Department of Revenue as the administrative agency chosen by statute for reasonable implementation in regards to your questions. However, if you find their interpretation is not reasonable or believe there is a further specific legal question you would like for this Office to answer, we will be glad to opine. However, it should be noted that South Carolina's Constitution directly addresses appropriations by county treasuries when it states:*
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> > *Money shall be drawn from the treasure of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.*
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> *S.C. Const. Article X, § 8 (emphasis added). First and foremost, it is well established that counties in South Carolina are political subdivisions of the State. Wheeler v. County of Newberry, 18 S.C. 132, 1882 WL 5648 (1882); St. v. Maryland, 189 S.C. 405, 1 S.E.2d 516 (1939); Op. S.C. Atty. Gen., 1990 WL 599363 (December 11, 1990) (citing Parker v. Bates, 216 S.C. 52, 56 S.E. 2d 723 (1950)); et al. Therefore, that section of the State Constitution would limit draws from a county treasury for appropriated funds only. This Office has previously opined:*

> *Thus, if a public official were to expend funds that were not appropriated, such action would be in violation of the South Carolina Constitution.*
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> *Op. S.C. Atty. Gen., 2007 WL 419432 (January 8, 2007) (emphasis added).*

Op. S.C. Atty. Gen., 2014 WL 1809641 (April 28, 2014). It is this Office's understanding that you have checked with the Department of Revenue on all four of your questions concerning the Local Option Sales Tax and that the Department of Revenue does not believe it can answer any of your questions pursuant to its authority to "administer and collect" the local option sales tax pursuant to South Carolina Code § 4-10-90 because the Department believes it has no authority to direct how the money is used in this instance. Therefore, we will proceed knowing that the Department of Revenue has issued no official opinion on your questions.[1]

Therefore, let us address your questions. Examining the relevant statues, South Carolina Code Section 4-10-40 states "[a]ll of the revenue received by a county and municipality from the Property Tax Credit Fund MUST be used to provide a credit against the property tax liability of taxpayers in the county and municipality..." (emphasis added). Whereas South Carolina Code Section 4-10-50(C) states that "[r]evenue distributed [pursuant to the County/Municipal revenue fund] to a county or municipality under this section MAY be used to provide an additional property tax credit in the manner provided in Section 4-10-40(B)" (emphasis added).

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)). Examining a plain reading of the statute, it is clear the Legislature intended to lesson taxpayer's property taxes; hence the title "Property Tax Credit Fund." S.C. Code § 4-10-40. While S.C. Code Section 4-10-40 mandates revenue from the Property Tax Credit Fund be distributed and the revenue received from the

[1] However, as you note, in 1995 the Department of Revenue drafted an advisory opinion that was never issued [SC Revenue Ruling #95-draft1 (TAX)] concerning LOST funds. While draft opinions are not authorized for use, it is this Office's understanding it would have been consistent with this opinion if it had been issued. At this time, there are no other published Department advisory opinions on your questiona that we are aware of except for a 2001 opinion which addressed its opinion on the calculation of the LOST credit for property taxes and what it would consider to be taxable property. See S.C. Revenue Advisory Bulletin No. 2001-6, 2001 WL 1922677 (S.C. Dept. Rev. f/k/a/ Tax. Comm., dated June 25, 2001).

fund as a "credit against the property tax liability," the statue does not specify what should occur when the municipality does not charge a property tax or when the tax has been paid through the fund and leftover funds remain. We agree with your contentions that an absurd result would occur if a court were to determine that the Department of Revenue could only distribute a share of the Property Tax Credit Fund "to those municipalities with a property tax" because this would only encourage municipalities to raise property taxes to the maximum amount they could possibly gain to obtain the maximum amount given to them pursuant to the Fund. Id. Moreover, this Office believes a court will find allowing a municipality to use any excess funds distributed to it pursuant to S.C. Code § 4-10-40 after the municipal property tax (if any) has been paid for any public purpose would be a reasonable interpretation. Based on legislative intent the only use of excess funds other than for a valid public purpose we think a court would determine is the municipality must use the funds to lower any remaining property taxes for the citizens of the municipality issued by the county. As our State Supreme Court concluded in the Westvaco case:

> The property tax credit is merely the distribution of the local option sales tax and, therefore, the topics in the local option sales tax statutes are clearly kindred in nature and have a legitimate and natural association with the subject of the title [Local Option Sales Tax]. Additionally, the title clearly conveys reasonable notice that the distribution scheme of the local option sales tax is within this act.

Westvaco Corp. v. S.C. Dept. of Revenue, 321 S.C. 59, 64, 467 S.E.2d 739, 742 (1995).

While we are not looking to other statutes to define terms in South Carolina Code § 4-10-40 nor to interpret it, we find your assertions consistent with some other statutes and Constitutional provisions. For example, one such statute states:

> Whenever a municipal corporation shall levy and collect a tax for any specific purpose, it shall be unlawful for the officers or agents of such municipal corporation to apply any of the proceeds of such tax levy to any other purpose than that for which it was collected, until such purpose shall have been discharged, fulfilled or abandoned. Any municipal officer or agent violating the provisions of this section shall be fined in a sum of not less than five hundred dollars or imprisoned not less than six months, or both, in the discretion of the judge.

S.C. Code § 5-21-130 (1976 Code, as amended). While this statute addresses when a municipal corporation levies a tax, we feel this is consistent with your opinion that once the purpose of the tax was fulfilled, the tax may be used for another public purpose. Moreover, Article X, Section 5 of the South Carolina Constitution states that "... [a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." While Article X, Section 9 requires that: "[a]n accurate statement of the receipts and expenditures of the public money shall be published annually in such manner as may be prescribed by law," we think as long as there is full disclosure and accounting of the funds that a court would allow expenditures for a public purpose, which is consistent with what you state that some municipalities are already doing. Furthermore, "...[t]he powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities." S.C. Code § 5-7-10 (1976 Code, as amended).

Moreover, this Office answered a question regarding the use of funds from LOST revenue for a municipality this year. In that opinion, this Office stated:

> *Please be aware that determining what qualifies as a proper use of a sales tax is a factual matter which is beyond the scope of an opinion. See Op. S.C. Atty. Gen., December 12, 1983.*
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> *A review of the Florence County ballot question that you sent us shows that it contained the language required of a proposed local option sales tax pursuant to section 4-10-30. Looking at the plain language of the ballot, a majority of the Florence County electorate approved the sales tax being used both as a credit against county and municipal property taxes and for the purpose of funding county and municipal operations in the Florence County area.*
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> ...
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> *The revenues from the local option sales tax distributed to the City of Florence are divided between the Property Tax Credit Fund and the County/Municipal Revenue Fund. According to the July 8, 2013 ordinance, "the entirety of the Property Tax Credit Fund and fifty (50%) percent of the County/Municipality Revenue Fund... shall continue to be utilized as a tax credit against City ad valorem property taxes. Florence Code of Ordinances § 2013-17. The remaining fifty (50%) percent of the County/Municipality Revenue Fund shall be utilized to raise the three million dollars committed by the City to acquire property for a third and fourth year medical school facility in downtown Florence and the three million dollars committed to redevelop neighborhoods that are struggling or blighted. Id.*
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> *As required by law, the City of Florence is using the distributions from the Property Tax Credit Fund as a tax credit against city property taxes. The issue is whether tax revenue from the County/Municipal Revenue Fund can be used to support a facility for teaching third and fourth year medical students. Pursuant to the Code, the City of Florence may use the distributions from the County/Municipal Revenue Fund to provide an additional property tax credit. However, the City of Florence is not prohibited from using the funds in a different manner. The South Carolina Department of Revenue has observed that "[t]he money in the County/Municipal Revenue Fund may be used for any legitimate government purpose including allowing an additional property tax credit to taxpayers." S.C. Revenue Advisory Bulletin No. 2001-6, 2001 WL 1922677 (June 25, 2001).*
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> ...
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> *Revenue from taxes is to be used for a "public purpose" in South Carolina. "It is well recognized that 'public funds must be expended only for a public purpose."' Op. S.C. Atty. Gen., May 8, 2013 (2013 WL 2121456) (citing Op. S.C. Atty. Gen., January 15, 1999). "[T]here are no restrictions imposed by the Constitution upon the purposes for which the Legislature may levy taxes and expend public funds, except that it be a public purpose." Op. S.C. Atty. Gen., May 8, 2013 (2013 WL 2121456) (citing Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969)). "In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision.... It is a fluid concept which changes with time, place, population,*

> *economy and countless other circumstances. It is a reflection of the changing needs of society." WDW Properties v. City of Sumter. 342 S.C. 6, 13, 535 S.E.2d 631, 634 (2000).*
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> *In Nichols v. S.C. Research Authority. 290 S.C. 415, 429, 351 S.E.2d 155, 163 (1986), the Court developed a four part test to determine whether the "public purpose" requirement has been met:*
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> > *The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.*
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> *The Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) further held that "[l]egislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit at the result of the enactment."*
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> *As stated above, whether or not tax revenue is being used by the City of Florence for a public purpose is a factual determination that must be made by a court.*

Op. S.C. Atty. Gen., 2014 WL 1909729 (April 29, 2014) (emphasis added).[2] See, also, Op. S.C. Atty. Gen., 2010 WL 1808731 (April 22, 2010) (opining that a women's shelter would be a valid project pursuant to the Capital Projects Sales Tax in 4-10-330(A)(1) et al. and can put such a project on the ballot for the Local Options Sales Tax referendum). While these opinions do not directly address the use of Property Tax Credit Fund money, we feel a court would find your assertions and desired use of the money consistent with previous opinions by this Office and consistent with the overall intent of the statute. It is for all of the above reasons this Office believes it is very likely a court will find that the Local Option Sales Tax does not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to reduce the taxes to the county owed by residents of the municipality.

Keeping the above analysis and conclusion in mind, let us address your questions concerning special purpose districts. As you are well aware, our South Carolina Constitution addresses some of your questions. 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), et al. Moreover, pursuant to state statute a municipality may contract with a county for the county to collect the municipality's taxes. S.C. Code § 12-51-170. Regarding an agreement with a special purpose district,

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[2] This Office will presume for purposes of your questions that Charleston County and/or James Island properly held any required referendums pursuant to S.C. Code § 4-10-30, et al and that any such ordinances are proper. This Office has not reviewed the referendum or any ordinances for purposes of this opinion. Additionally, what constitutes a public purpose must be a factual determination to be made by a court. Id.

> Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. ... Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

S.C. Code § 5-7-60(1976 Code, as amended). As further stated in our 2014 opinion:

> *Furthermore, contributions of public funds by one political subdivision to assist another have been authorized. We have previously opined:*
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> > *A number of other decisions of our Supreme Court have also upheld contributions of funds by a county to another governmental entity to assist in a public venture. Cothran v. Mallory. 211 S.C. 387, 45 S.E.2d 599 (Spartanburg County and City of Spartanburg jointly built auditorium); Shelor v. Pace, 151 S.C. 99, 148 S.E. 726 (Oconee County issued bonds for school purposes); Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (Jasper County issued bonds for school district); Stackhouse v. Floyd, 248 S.C. 183. 149 S.E.2d 437 (Dillon County issued bonds for school district); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (Florence County donated $1,000,000 to Pee Dee Regional Health Service District to build hospital). And in a previous opinion, this Office concluded that the issuance of bonds in the amount of $200,000 by Richland County in order to make a contribution for the construction of the Carolina Coliseum even though 'title to the Coliseum will be in the University and control, thereof will be by the University.' 1967 Op. Atty. Gen., Op. No. 2225, p. 23, 24.*
> >
> > *It is true that the majority of the foregoing decisions were rendered prior to the adoption of new Article X of our Constitution and before the enactment of the Home Rule Act. See. § 4-9-10 et seq. However, it would appear that these prior decisions are consistent with the aforesaid newly adopted provisions of law. Article X, § 14(4) provides in pertinent part:*
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> > > *(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision. (Emphasis added).*
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> *Op. S.C. Atty. Gen., Op. No. 85-5, January 21, 1985 (1985 WL 165976).*

Op. S.C. Atty. Gen., 2014 WL 1909729 (April 29, 2014) (emphasis added). See, also, Op. S.C. Atty. Gen., 2008 WL 2614989 (June 25, 2008) (opining that Anderson County could use revenue from its

Capital Projects Sales Tax to pay for water for the county and its residents). It is for all of these reasons we feel a court will find that a municipality may also use excess funds from its Property Tax Credit Fund to pay for public services (such as water and sewer fees) for its citizens by a special purpose district, whether directly or indirectly receiving LOST funds as long as it serves a valid public purpose and all municipal taxes (if any) have been credited to the taxpayers.[3][4]

Conclusion: Based on the statutory intent of the Property Tax Credit Fund to lower taxes and other reasons herein cited, this Office believes a court will find that as long as all municipal property taxes (if any) have been credited to the taxpayers and as long as it serves a valid public purpose, the Local Option Sales Tax would not preclude a municipality from coming to an agreement with a county to use funds received by the municipality for the Property Tax Credit Fund to reduce ad valorem taxes to the county owed by residents of the municipality and that excess funds from the municipality's Property Tax Credit Fund may also be distributed in the same manner to pay for public services (such as water and sewer fees) for its citizens by a special purpose district, whether directly or indirectly. However, for a binding conclusion on these questions this Office would recommend you seek a declaratory judgment from a court, as only a court of law may interpret the law. 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 an 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

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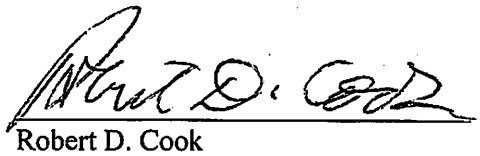
[3] We presume that a court would require a reduction of such fees be provided to all residents consistent with the way the Property Tax Credit Fund is distributed.

[4] Additionally, the statute allows for a property liability to include "fees in lieu of property taxes." S.C. Code § 4-10-40(b)(2)(a). However, 4-10-40(B)(2)(c) states that "reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4-1-170 in connection with location in a multi-county industrial or business park." Section (B)(2) was added by amendment in 1998. See 1998 Act No. 442 § 13 (eff. August 31, 1998). As an aside one may make the argument that any municipal or county fee appearing on the tax bill may be applicable, but a court may determine that was not the intent of the 1998 amendment. See, also, S.C. Revenue Advisory Bulletin No. 2001-6, 2001 WL 1922677 (S.C. Dept. Rev. f/k/a/ Tax. Comm., dated June 25, 2001) (stating that "[i]n the Department's opinion, only a fee created pursuant to Code Section 4-1-170 (a non-negotiated fee created solely because the property is located in a multicounty park) is eligible for a LOST credit. Property subject to a negotiated fee in lieu of property tax, pursuant to Chapter 12 of Title 4, Section 4-29-67, or Chapter 44 of Title 12 of the Code is not eligible for the LOST credit and the value of the property subject to a negotiated fee in lieu of taxes is not included in the appraised value of the taxpayer's taxable property or the total appraised value of the county's or municipality's taxable property. See Code Section 4-10-40. If property is located in a multicounty park established pursuant to Code Section 4-1-170 and such property is also subject to a negotiated fee, the property, in the Department's opinion, is not entitled to a LOST credit."). See, also, S.C. Code 12-2-90.

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General