ALAN WILSON
ATTORNEY GENERAL

May 24, 2016

Mr. Harry R. Easterling, Jr.
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Dear Mr. Easterling,

We have received your letter expressing concern over a grant awarded by the Marlboro County Transportation Commission ("the CTC") to the Lake Paul A. Wallace Authority. According to your letter, a recent newspaper article reported that the CTC has given the Authority a $340,000 grant to pay for parking lot resurfacing and fencing at a local state-owned lake. You have calculated that the grant represents approximately one-third of the funds that are available for road work on county roads in Marlboro County.

In your review of the powers given to the CTC, you state that "we can find no authority for the CTC to award grants generally or authority to provide a grant of "C" funds for projects other than state highways, county roads, for street and traffic signs, and for other road and bridge projects." As such, you ask: "[d]oes the CTC have the statutory authority to expend funds in this manner" and also "[a]re there any consequences for Marlboro County should the County Transportation Committee spend these funds in a way which is not authorized by statute?" Our analysis follows.

Law / Analysis

The governing authority for the expenditure of the gasoline tax, commonly known as the "C" funds, is S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015). Analyzing Section 12-28-2740 in a prior opinion of this Office, we have explained that:

> [t]he statute provides a means by which roads of the various counties may be constructed, improved, and maintained. The "C" funds are appropriated to the counties by the formula specified in subsection (A). The "C" funds must be deposited with the State Treasurer and expended for the purposes set forth in the statute. Id. The South Carolina Department of Revenue must submit the percentage of the total represented by each county to the South Carolina Department of Transportation (DOT) and annually to each county transportation committee. See § 12-28-2740(A)(3). Upon request of a county transportation committee, the DOT may continue to administer the funds allocated to the county. Id. Importantly, the "C" funds expended must be approved by and used in

> furtherance of a countywide transportation plan adopted by a county transportation committee. See § 12-28-2740(B). Before the expenditure of "C" funds by a county transportation committee, the committee must adopt specifications for local road projects. See § 12-28-2740(F). The countywide and regional transportation plans must be reviewed and approved by the DOT. Id. In counties electing to expend their allocation directly pursuant to subsection (A), specifications of roads built with "C" funds are to be established by the countywide or regional transportation committee. In counties in which the county transportation committee elects to have "C" funds administered by the DOT, primary and secondary roads built using such funds must meet the DOT specifications. Id. All unexpended "C" funds allocated to the county remain in the account allocated to the county for the succeeding fiscal year and must be expended as provided in the statute. See § 12-28-2740(E).

Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012).

Furthermore, and important to answering your questions, subsection (C) addresses the uses for which "C" funds can be spent. Such subsection provides as follows:

> [a]t least twenty-five percent of a county's apportionment of "C" funds, based on a biennial averaging of expenditures, must be expended on the state highway system for construction, improvements, and maintenance. The Department of Transportation shall administer all funds expended on the state highway system unless the department has given explicit authority to a county or municipal government or other agent acting on behalf of the county transportation committee to design, engineer, construct, and inspect projects using their own personnel. *The county transportation committee, at its discretion, may expend up to seventy-five percent of "C" construction funds for activities including other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.*

S.C. Code Ann. § 12-28-2740(C) (emphasis added).

Again, your question concerns $340,000 granted by the CTC to the Lake Paul A. Wallace Authority for resurfacing of parking lots and fencing. As Section 12-28-2740 states that up to seventy-five percent of "C" funds can be spent on the county's local transportation system "for activities including other local paving or improving county roads, for street and traffic signs, and other road and bridge projects," the uses for "C" funds stated in your letter are not specifically included in Section 12-28-2740. As such, we must look to the rules of statutory interpretation to determine whether such funds can be expended as described.

In construing any statute, the primary objective is to ascertain and effectuate the intent of the legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980). Words used in statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCollum v. Snipes, 213 S.C. 254, 265-66, 49 S.E.2d 12, 16 (1948). "What a legislature says in the text of a statute is considered the best evidence of the

legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

It is also well understood that statutory provisions do not stand alone but must be read in the context of the statutory scheme as a whole. Hinton v. South Carolina Dep't of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). Also, the statutory language in question "must be read in a sense which harmonizes with its subject matter and accords with its general purpose." Multi-Cinema, Ltd. v. S.C. Tax Comm'n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987).

When the Legislature uses words of particular and specific meaning followed by general words, the general words are construed to embrace only persons or things of the same general kind or class as those enumerated. Sheppard v. City of Orangeburg, 314 S.C. 240, 243, 442 S.E.2d 601, 603 (1994). Put differently, it is a basic rule of statutory construction that "general words—and it makes no difference how general—will be confined to the subject treated thereof." Gov't Employees Ins. Co. v. Draine, 389 S.C. 586, 595, 698 S.E.2d 866, 871 (Ct. App. 2010) (citing Henderson v. McMaster, 104 S.C. 268, 272, 88 S.E 645, 646 (1916); Beattie v. Aiken County Dep't of Soc. Servs., 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995)).

In many prior opinions of this Office, we have addressed whether certain expenditures would likely be an appropriate use of "C" funds. See Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012); Op. S.C. Att'y Gen., 1998 WL 746209 (Aug. 13, 1998); Op. S.C. Att'y Gen., 1989 WL 508559 (June 12, 1989); Op. S.C. Att'y Gen., 1986 WL 192043 (Aug. 1, 1986); Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978). In the majority of these opinions, the question concerned whether the paving of roads in a particular area would be an appropriate use of "C" funds. Thus, the crux of the analysis was whether the expenditure of public funds was being used for a public purpose, as required by both the Federal and State Constitutions. In regards to the use of public funds, our June 19, 2012 opinion explained as follows:

> the expenditure of public funds must be for a public, not a private purpose. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). As the Court suggested in Elliott, the Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose. An opinion of this office dated December 18, 2000, commented that the constitutional requirement of "public purpose" "...was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises." Moreover, Article X, § 5 of the South Carolina Constitution requires that taxes (public funds) be spent for public purposes. Such provision proscribes the expenditure of public funds "for the primary benefit of private parties." Op. S.C. Atty. Gen., October 8, 2003.
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> While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by the South Carolina Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:

> [a]s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof. Legislation [i.e., relative to the expenditure of funds] does not have to benefit all of the people in order to serve a public purpose.

Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012).

Applying the same "public purpose" principles recited above, in our August 1, 1986 opinion we opined that Florence County's use of "C" funds to build roads on private property which it anticipated developing as an industrial part was likely proper as such would most probably be an expenditure of public funds for a public purpose. Op. S.C. Att'y Gen., 1986 WL 192043 (Aug. 1, 1986). Similarly, in our June 12, 1989 opinion, we concluded that "C" funds could be used to lay roads on Laurens County property to be used as an office and light industrial park as such would likely constitute a public purpose. Op. S.C. Att'y Gen., 1989 WL 508559 (June 12, 1989). In an August 13, 1998 opinion, we also opined that the Anderson County Transportation Committee's expenditure of "C" funds to construct and maintain the internal roads within an industrial park would likely be an appropriate expenditure benefiting a public purpose. Op. S.C. Att'y Gen., 1998 WL 746209 (Aug. 13, 1998).

We have also addressed the use of "C" funds for purposes other than the paving of roads. See Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012); Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978). Under the prior version of S.C. Code Ann. § 12-28-2740 – Section 12-27-400 – our August 4, 1978 opinion concluded that the use of "C" funds for the purpose of resurfacing airport runways owned by airport authorities or counties had "no statutory sanction." Op. S.C. Att'y Gen., 1978 WL 35013 (Aug. 4, 1978).

In a more recent opinion, dated June 19, 2012, we addressed the use of "C" funds for the maintenance of highway/railroad crossings and bridges. Op. S.C. Att'y Gen., 2012 WL 2484919 (June 19, 2012). In construing Section 12-28-2740(C)'s language that up to seventy-five percent of "C" funds can be used by a county transportation committee for activities including "local paving or improving county roads, for street and traffic signs, and for other road and bridge projects" we provided that "[c]learly, by this language the Legislature merely designated examples of purposes acceptable for the expenditure of "C" funds by a county transportation committee. A county transportation committee is thus not expressly limited by the above provision to specific projects for the use of "C" funds." Id. We therefore concluded that such expenditure would likely be an appropriate use of "C" funds, "provided that such are acceptable in the county or regional transportation plan adopted by the transportation committee and are designated for a public purpose." Id.

In review of Section 12-28-2740, the rules of statutory construction, and prior opinions of this Office addressing whether certain expenditures would likely be an appropriate use of "C" funds pursuant to Section 12-28-2740's requirements, we are hesitant to opine that the use of "C" funds to pay for parking lot resurfacing and fencing at a local state-owned lake would be appropriate. While we believe the expenditure would likely constitute a public purpose, it is not

apparent that the public purpose of the improvement projects specified – resurfacing parking lots and fencing benefiting a public lake – comports with the statutory intent for the use of "C" funds for local projects, as set forth by S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015).

We reach this conclusion in looking to the plain language of the statute. As stated in S.C. Code Ann. § 12-28-2740(B) (2014 & Supp. 2015), "[t]he funds expended must be approved by and used in furtherance of a countywide *transportation plan* adopted by a county transportation committee." (Emphasis added). And, of the seventy-five percent of "C" funds that can be used for local projects, examples of such local projects include "other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects." S.C. Code Ann. § 12-28-2740(C) (2014 & Supp. 2015). We believe that each of these purposes directly benefit *transportation* and, pursuant to the rules of statutory construction, other purposes not listed would have to do the same. Therefore, as to whether the resurfacing of parking lots and fencing at Lake Paul A. Wallace would appropriately be a part of the countywide transportation plan and comport with the uses allocated for "C" funds for local projects, it is our opinion that such use is highly questionable. We believe a court would likely conclude that the use of "C" funds for such uses are outside of the legislative intent specified by the plain language of Section 12-28-2740. Thus, in reaching this conclusion, we find it unnecessary to address whether such expenditure could be done in the form of a grant.

Finally, you ask whether there are any consequences for the county should the CTC spend these funds in a way which is not authorized by statute. We have previously explained the liability of public officers acting beyond the scope of their statutory powers. As we recognized in a May 13, 1997 opinion:

> [t]he law in South Carolina is supportive of liability for public officers who perform ultra vires acts. Our Supreme Court has held, for example that
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> > [t]he principle is firmly settled in this State that a taxpayer may maintain an action in equity on behalf of himself and all other taxpayers, to restrain public officers from paying out public money for purposes unauthorized by law. Sligh v. Bowers, 62 S.C. 409, 40 S.E. 885; Mauldin v. City Council of Greenville, 33 S.C. 1, 11 S.E. 434, 8 L.R.A.; 291; McCullough v. Brown, 41 S.E. 220, 19 S.E. 458, 23 L.R.A. 410, Pom. Eq. Jur. 277, Sec. 260; 2 Dill. Mun. Corp., Sec 736.
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> Kirk v. Clark, 191 S.C. 205, 210, 4 S.E.2d 13 (1939). In Chandler v. Britton, 197 S.C. 303, 310, 15 S.E.2d 344 (1941), the Court stated that "in the absence of any statutory law to the contrary a public official is not liable for the loss of funds deposited with him if he has exercised that degree of care and prudence in the management of funds which a person of ordinance care and prudence would exercise in his own business." The Court, in Long v. Seabrook, 260 S.C. 562, 568, 197 S.E.2d 659 (1973) concluded that "[t]he failure of a public official to comply with the laws governing and regulating his powers and duties may give rise to liability." And in Sumter Co. v. Hurst, 189 S.C. 316, 1 S.E.2d 242 (1939),

> the Court said that "[w]e think that there can be no dispute of the proposition that when a public officer received money for the public use, he is a trustee to receive such monies and to pay them to the public official or function for whom or which they were intended." Id. at 319.

Op. S.C. Att'y Gen., 1997 WL 323769 (May 13, 1997).

Accordingly, should a court determine that "C" funds were expended for a purpose not authorized by S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015), it is our belief that the members of the CTC could be personally liable as public officers paying money for purposes unauthorized by law. We also believe any liability on the part of the county would result vicariously; however, pursuant to Section 12-28-2740, it does not appear that county council has direct oversight of the CTC. See S.C. Code Ann. § 12-28-2740(B) ("The county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county"); S.C. Code Ann. § 12-28-2740(F) ("The countywide and regional transportation plans provided for in this section must be reviewed and approved by the Department of Transportation"). Both the authority of the CTC to provide "C" funds to the Lake Paul A. Wallace Authority and any resulting liability on behalf of the CTC members is a factual determination that must be resolved by a court. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court of other fact-finding body, we are not able to adjudicate or investigate factual questions"). The above is merely this Office's opinion of how a court would likely rule on such issues given the information we have been provided.

Conclusion

At the discretion of the CTC, S.C. Code Ann. § 12-28-2740(C) authorizes seventy-five percent of "C" funds to be used for local projects, and examples of such local projects include expenditures for "other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects." In review of this provision with Section 12-28-2740 as a whole, the applicable rules of statutory interpretation, and prior opinions of this Office addressing whether certain expenditures would likely be an appropriate use of "C" funds pursuant to Section 12-28-2740's requirements, we do not believe that the use of "C" funds to pay for parking lot resurfacing and fencing at a local state-owned lake would be appropriate. While we believe these expenditures would likely constitute a public purpose, it is not apparent that the public purpose of resurfacing parking lots and fencing benefiting a public lake comports with the statutory intent of Section 12-28-2740. Based on the plain language of such statute, we believe such intent is that "C" funds for local projects must be used in furtherance of the county wide transportation plan and in direct benefit of the county transportation projects.

Should a court determine that "C" funds were expended for a purpose not authorized by S.C. Code Ann. § 12-28-2740, in line with prior opinions of this Office, it is our belief that the members of the CTC could be personally liable as public officers making expenditures for purposes unauthorized by law.

We reiterate that both the authority of the CTC to provide "C" funds to the Lake Paul A. Wallace Authority and any resulting liability on behalf of the CTC members are factual determinations that must ultimately be resolved by a court. The opinions expressed herein are merely this Office's interpretation of how a court would rule when addressing the questions you have presented.

Very truly yours,

Anne Marie Crosswell

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REVIEWED AND APPROVED BY:

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