ALAN WILSON
ATTORNEY GENERAL

December 20, 2016

The Honorable J. Derham Cole, Member
South Carolina House of Representatives
District 32
P.O. Box 1467
Spartanburg, SC 29304

Dear Representative Cole:

You have asked that we "reconsider [our] opinion . . . dated May 6, 2016 (the "Opinion") . . . regarding the provisions of S.C. Code Ann. § 61-6-2010." In addition, you request our opinion "as to whether the Code and/or case law authorize the South Carolina Department of Revenue (the "Department") to cancel certain permits that have been authorized by an affirmative vote at referendums previously held in General Elections, which is what the Department has stated it intends to do as outlined in the attached communication (Attachment 2) dated August 26, 2016."

By way of background, you state the following:

> The document from the Department, which references the Opinion, will have the potential of reversing the will of the voters of the City of Spartanburg expressed in a referendum held in November of 2003 and a similar referendum of the voters of the County of Spartanburg held in November of 2014. I understand that it will have a similar disruptive effect on a significant number of other cities and counties. Likewise, the Opinion creates uncertainty and may be equally disruptive for referendums scheduled for the upcoming November 8, 2016 General Election.
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> As to the request for reconsideration, 1 would ask you to consider the following:
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> 1) Subsection 61-6-2010(C)(1)(c), which is the focus of the Department's August 26, 2016 missive, sets out the ballot language to be used where a city or county wishes to hold a referendum solely to permit the sale of beer or wine for off-premises consumption (and not for the sale of liquor for on-premises consumption). That subsection reads as follows:
>
> (c) in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be "Shall the Department of Revenue be authorized to issue

> temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days of hours of sales?"

The Department's missive appears to misread the language "county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993." In the Department's view, that language means the only cities and counties that may use the ballot language found in subsection 61-6-2010(C)(1)(c) are those counties and cities which had passed a referendum permitting on-premises alcohol sales prior to June 21, 1993. That interpretation, however, misreads the statutory language, is inconsistent with the meaning and intent of section 61-6-2010 when read as a whole, and leads to an absurd result.

The Department misreads the statutory language because subsection 61-6-2010(C)(1)(c)'s reference to "a county or municipality where temporary permits are authorized pursuant to this section as of June 21, 1993" means ***every*** municipality or city of the state because the statute "authorized" all counties and cities to allow the permits in question, subject of course to holding a referendum. This interpretation – and the intended meaning of the language – are made clear when this subsection is read in conjunction with subsection 61-6-2010(E), which reads as follows:

> (E) temporary permits for the sale of beer and wine for off-premises consumption authorized to be issued in a county or municipality pursuant to the referendum provided for at that time may continue to be issued or reissued without the requirement of a further referendum.

When the two provisions are read together in harmony, it appears clear that the intent of the General Assembly was to be certain to "grandfather in" all referendums that had been passed prior to the June 21, 1993 date. Additionally, the intent is clearly expressed that going forward, all municipalities and counties would have three options to present to the voters (1) authorize only on-premises sale of alcoholic liquors *and* the off-premises sale of beer and wine, using the ballot language in subsection (C)(1)(b); (2) authorize both on-premises sale of alcoholic liquors *and* the off-premises sale of beer and wine, using the ballot language in subsection (C)(1)(b); or (3) authorize only the off-premises sale of beer and wine, using the ballot language in subsection (C)(1)(c). The language of the two subsections above discussed also clearly provide, that in the case of a city or county that had, prior to June 21, 1993, held a referendum only for on-premises sale of alcoholic beverages, that city or county – like *all* cities or counties – could hold a referendum only for off-premises sale of beer and wine without holding a second referendum on the sale of alcoholic beverages.

2) The construction and application outlined in item 1 above is consistent with the manner in which these statutes have been applied in practice by numerous cities and counties and the Department of Revenue. As you know, there is a large body of law that supports the proposition that prior usage and practice is to be considered in construing and applying provisions of statutes.

3) The construction and application in item 1 above is consistent with the overall statutory scheme of Title 61 of the South Carolina Code of Laws in that the sale of "alcoholic beverages" and "beer and wine," including the on- and off-premises sales of such products, is regulated in a manner that recognizes there is a real distinction between "alcohol beverages" and "beer and wine."

As to the legal authority of the Department I ask for your opinion as to whether the Department has the legal authority to take the actions threated in its August 26, 2016 missive, namely to cancel existing permits approved at prior referendums in a significant number of Cities and Counties unless (a) General Assembly amends the statutes in question by June 30, 2018, or (b) unless additional city or county referendums are held prior to June 30, 2018.

In the absence of a compelling legal authority, the Department's threatened nullification of the permits in question – permits which have been authorized by a prior vote of the electors in the various cities and counties – flies in the face of our cherished democratic processes. The Department's communication provides no legal authority for the cancellation of the permits, and I am aware of no such authority. The Department's letter does make reference to the Attorney General's May 6, 2016 Opinion. However, the May 6, 2016 Opinion, even if not reconsidered as I am requesting, should only rationally be applied prospectively to future referendums and not to a reverse a prior vote of the electorate.

For the reasons set forth below, and based upon the additional information you provide, we agree with your interpretation of § 61-6-2010(C)(1).

Law/Analysis

1. The May 6, 2016 Opinion

In our May 6, 2016 Opinion, we advised Clemson as to the requirements of § 61-6-2010. As we there noted, "[t]his Section concerns the issuance of temporary permits by the Department of Revenue, authorized through referendum, for the possession, sale, and on-premise consumption of alcoholic liquors by the drink and the on-site sale of beer and wine for off-premises consumption. These permits are often referred to as seven-day permits, Sunday sales permits, and local option permits."

Our opinion attempted to trace the history of § 61-6-2010 as it currently exists and has existed for the past decade or so. Included in that history are opinions of this Office construing earlier versions of the statute, as well as decisions of the Administrative Law Court. Our conclusion in the May 6th Opinion was as follows:

> [b]ased upon the legislative history of S.C. Code Ann. § 61-6-2010 (2009 & Supp. 2015) and § 61-4-510 (2009 & Supp. 2015) and the rules of statutory construction as specified above, it is our opinion that a court would find the City of Clemson would

have to hold a new referendum asking the question contained in S.C. Code Ann. § 61-6-2010(C)(1)(b) in order to present the question of whether the City can permit the Sunday sales of beer and wine for off-premises consumption to its voters. In addition, we believe the City of Clemson must wait the forty-eight month waiting period as required by Section 61-6-2010(C)(2) prior to holding a referendum on the question contained in Section 61-6-2010(C)(1)(b).

We have reached this conclusion by looking to the plain language of S.C. Code Ann. § 61-6-2010(C)(1)(c), specifying that a referendum on the question of whether special permits can be issued for the sale of beer and wine for off-premises consumption alone only applies "in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993." Thus, counties and municipalities holding a referendum pursuant to Section 61-6-2010(C)(1)(c) would already be authorized to issue special permits for the sale of on-premises consumption of liquor as of June 21, 1993. You have provided that the City of Clemson held a favorable referendum in November of 2014 relating to the on-premises consumption of liquor by the drink. Thus, we presume it was not authorized to issue special permits for the same purpose as of June 21, 1993.

The remaining referendum question applicable to the City of Clemson for it to present the question of whether special permits can be issued for the Sunday sale of beer and wine for off-premises consumption to the voters is the question contained in Section 61-6-2010(C)(1)(b):

> "Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?"

S.C. Code Ann. § 61-6-2010(C)(1)(b) (2009) (emphasis added). Thus, because we believe it is necessary for the question of on-premises liquor by the drink to be presented again with the question of the sale of beer and wine for off-premises consumption, it is our opinion that the forty-eight month waiting requirement specified in Section 61-6-2010(C)(2) must be applied.

As we do not believe the current law provides a way for a referendum solely on the question of whether special permits for the Sunday sale of beer and wine for off-premises consumption to be presented in situations like that of the City of Clemson, perhaps seeking legislative amendment of the clause "in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993" currently contained in Section 61-6-2010(C)(1)(c) would be the most expeditious means for the City of Clemson to hold a second referendum

> solely on the issue of whether it can permit the Sunday sale of beer and wine for off-premises consumption.
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> Finally, in regards to your second question of whether the forty-eight month waiting requirement would apply to Section 61-6-2010(C)(4) (2009), permitting a governing body of a county or municipality to call a referendum on the questions provided in Section 61-6-2010(C)(1)(a)-(c) by ordinance rather than by means of a petition, it is our opinion that a court would find that it does. Reading the statute as a whole, the legislature has provided no indication that it did not intend for such requirement to apply to a referendum called by means of ordinance. Alternatively, it did expressly exclude the forty-eight month waiting requirement in instances when a municipal governing body calls a referendum pursuant to Section 61-6-2010(D)(3). We believe this comparison clearly indicates that it was the Legislature's intent the forty-eight month waiting requirement would apply to referenda called pursuant to Section 61-6-2010(C)(4).
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> The South Carolina Department of Revenue is responsible for issuing special permits and regulation of Title 61. As such, we have been in contact with the Department of Revenue's Office of General Counsel for Litigation concerning this matter, and it has indicated its concurrence with the conclusions expressed above.

(emphasis added). Thus, we applied a literal interpretation of § 61-6-2010(C)(1)(c).

2. Section 61-6-2010 and Other Relevant Statutes

The subject of the May 6th Opinion and your request is § 61-6-2010, particularly Subsection (C)(1)(c). In pertinent part, § 61-6-2010(C)(1) provides as follows:

> . . . (C)(1) A permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permit. The county or municipal election commission, as the case may be, shall conduct a referendum upon petition of at least ten percent but not more than seven thousand five hundred qualified electors of the county or municipality, as the case may be. The petition form must be submitted to the election commission not less than one hundred twenty days before the date of the referendum. The names on the petition must be on the petition form provided to county election officials by the State Election Commission. The names on the petition must be certified by the election commission within sixty days after receiving the petition form. The referendum must be conducted at the next general election. The election commission shall cause a notice to be published in a newspaper circulated in the county or municipality, as the case may be, at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The election commission shall publish the results of the referendum and certify them to the South Carolina Department of Revenue. The question on the ballot shall be one of the following:

> (a) "Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales?" or
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> (b) "Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or house of sales?" or
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> (c) in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be "Shall the Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?"
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> (2) A referendum for this purpose may not be held more often than once in forty-eight months.

(emphasis added). Further, as you note, Subsection (E) of § 61-6-2010 provides that

> "(E) Temporary permits for the sale of beer and wine for off-premises consumption authorized to be issued in the county or municipality pursuant to the referendum provided at that time may continue to be issued or reissued without the requirement of a further referendum."

In addition to § 61-6-2010, significant also is § 61-4-510, entitled "special retail beer and wine permits." Subsection (A) provides that

> [i]n counties or municipalities where off-premises beer and wine permits are specifically authorized pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

We now turn to the governing principles of statutory construction relevant here.

3. Governing Principles of Statutory Construction

When construing statutes, such as § 61-6-2010, a number of rules of interpretation are applicable. First and foremost, in interpreting an act, 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, 266, 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 or will" and "courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 553 S.E.2d 578, 581 (2000).

In addition, our courts have recognized that there are occasions where legislative intent must prevail over the literal language used in the statute. It is well settled that "[c]ourts are not always confined to the literal meaning of a statute. . . ." S.C. Dept. of Social Services v. Forrester, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984). Our Supreme Court recognized in Wade v. State of South Carolina, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002), the following rule of construction:

> [a]dditionally, courts are not confined to the literal meaning of a statute where the literal import of words contradicts the real purpose and intent of the lawmakers. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). To obtain the real purpose and intent of the lawmakers a court must not look to the "phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose." City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967). All provisions of a statute must be given full force and effect. Nucor Steel v. South Carolina Pub. Serv. Com'n, 310 S.C. 539, 426 S.E.2d 319 (1992).

As was said in Hamm v. S.C. Public Service Comm'n., 287 S.C. 180, 182, 336 S.E.2d 470, 471 (1985), "[h]owever clear the language of a statute may be, the court will reject that meaning when it leads to an absurd result not possibly intended by the legislature." Further, "'it is a rule of construction well known that, in undertaking to fix and place meaning upon statutes, we should do so in light of the contemporaneous history, and in reference to the habits and activities of our people.'" Palmetto Golf Club v. Robinson, 143 S.C. 347, 141 S.E. 610, 621 (1928), quoting Ex Parte Roquenmore, 60 Tx. Crim., 1315 W. 1101, 1103 (1935). Moreover, the touchstone of interpretation is that "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Finally, "[u]nder South Carolina law, an amended statute should be construed 'as if the original statute had been repealed and a new and independent Act in the amended form adopted.'" State ex rel. Carter v. State, 325 S.C. 204, 208, 481 S.E.2d 429, 431 (1997) (quoting Windham v. Pace, 192 S.C. 271, 284, 65 S.E.2d 270, 275-76 (1939).

4. Legislative History

There is an extensive legislative history underlying adoption of § 61-6-2010 in its present form. For all intents and purposes, present § 61-6-2010(C)(1) owes its current wording to passage of Act No. 139 of 2005. As we noted in our May 6, 2006 Opinion, the title of Act 139 of 2005 sets forth the purpose of the Act with respect to § 61-6-2010:

> . . . Act No. 139 of 2005 amended Section 61-6-2010 to "'delete the references to alcoholic liquors 'in sealed containers of two ounces or less' [minibottles] and to allow a referendum for temporary permits for the sale of beer and wine.'" Act No. 139, 2005 S.C. Acts 1584. Specifically, as codified in 61-6-2010(C)(1)(c), a third possible referendum question was added reading as follows:
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> > In case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be 'shall the Department of revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?':
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> Act No. 139, 2005 S.C. Acts 1599 (emphasis in original).

We also outlined the complete legislative history of special beer and wine permits in our May 6, 2016 Opinion. There, we summarized this extensive history, particularly that prior to adoption of Act No. 139 of 2005 as follows:

> [i]n regards to special retail beer and wine permits, before Section 61-4-510's recodification, its prior version was found in the Code at Section 61-9-312. See Act No. 164, Part II § 55, 1993 S.C. Acts 1228-29. In a prior opinion of this Office dated October 7, 1994, we explained the requirements of Section 61-9-312 as follows:
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> > Section 61-9-312 was adopted by the General Assembly as part of the 1993-94 Appropriation Act, Part II, § 55, Act No, 164 of 1993. Subsection A of that section is codified as § 61-9-312:
> >
> > In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180, in lieu of the retail permit fee required pursuant to Section 61-9-310, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-9-90, 61-9-100, and 61-9-130. . . .
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> Not codified but equally as important, subsection C of that part of the Appropriations Act provides:

> The special version of a retail beer and wine permit provided in Section 61-9-312 of the 1976 Code in subsection A, may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 as of the effective date of this section, county or municipal election commissions shall conduct a referendum upon petition, as provided in section 61-5-180, solely to determine if the special permits authorized in Section 61-9-312 are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-5-180 after the effective date of this section, the special permits may be issued as provided in Section 61-9-312.

The effective date of these provisions was June 21, 1993.

Op. S.C. Att'y Gen., 1994 WL 649295 (Oct. 7, 1994).

In accord with the plain language of the statute as written above, our 1994 Opinion concluded that a prerequisite to the issuance of a special beer and wine permit under § 61-4-510 was a successful referendum pursuant to § 61-6-2010, concerning the issuance of temporary permits for the possession, sale, and consumption of alcoholic liquors. Id.; see also Op. S.C. Att'y Gen., 2001 WL 564584 (April 18, 2001) (discussing the October 7, 1994 opinion). Furthermore, we opined that if a referendum was held pursuant to § 61-6-2010 by a county or municipality on or before June 21, 1993, a second referendum must be held to determine if the special version of the beer and wine permit could be issued in that county or municipality. Id. Relying on the language of Part II, § 55, Act No, 164 of 1993, our October 7, 1994 opinion also concluded that a second referendum was required for the special beer or wine permit even if the referendum held pursuant to § 61-6-2010 was conducted after June 21, 1993. Id.

After our 1994 opinion was written, the Legislature amended Section 61-4-510 (formerly § 61-9-312) by Act 415 of 1996. Act No. 415, 1996 S.C. Acts 2475. As we explained in an opinion dated April 18, 2001:

Subsection (A) listed below and codified in § 61-4-510 was enacted as was subsection (B) below, even though not codified:

> (A) In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

(B) The special version of a retail beer and wine permit provided in subsection (A) may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 only after June 21, 1993. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993, county or municipal election commissions must conduct a referendum upon petition, as provided in Section 61-6-2010, solely to determine if the special permits authorized in subsection (A) are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-6-2010 after June 21, 1993, the special permits may be issued as provided in subsection (A).

Op. S.C. Att'y Gen., 2001 WL 564584 (April 18. 2001).

Upon the enactment of Act 415 of 1996, we modified our 1994 opinion discussed above on the basis that the General Assembly "clarified the situation concerning the issuance of special beer and wine permits in those counties or municipalities which have held or will hold the referendum pursuant to § 61-6-2010 after June 21, 1993." Id. In light of this clarification, our 2001 opinion provided as follows: "it now seems clear that a successful referendum pursuant to § 61-6-2010 held after June 21, 1993, would be sufficient to allow a county or municipality to issue the special beer and wine permits provided for in S.C. Code Ann. § 61-4-510." Id. In other words, if a county held a successful referendum on temporary permits for the possession, sale, and consumption of alcoholic liquors pursuant to Section 61-6-2010 after June 21, 1993, that referendum automatically authorized permits for the sale of beer and wine for off-premises consumption as well.

Since our 2001 opinion, the Legislature has amended both Sections 61-4-510 and 61-6-2010. Significant amendments were made by Act No. 70 of 2003. See Act 70 §§ 5, 16, 2003 S.C. Acts 828, 832. Specifically, Section 5 of Act 70 amended S.C. Code Ann. § 61-4-510(A), providing as follows:

> [i]n counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

Act 70 § 5, 2003 S.C. Acts 828 (emphasis added).

Furthermore, Section 16 of Act 70 revised the referendum questions contained in Section 61-6-2010, stating that the question on the ballot shall be one of the following:

> 'Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales?' or
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> 'Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?'

Act 70 § 16, 2003 S.C. Acts 832 (emphasis added).

Act 70 of 2003, effective June 25, 2003, therefore added the requirement that seven-day permits may only be issued in counties or municipalities which have held referendums specifically authorizing off-premises beer and wine consumption permits, and revised the questions to be listed on the referendum ballot accordingly. As the Administrative Law Court explained in Piedmont Petroleum Corp. v. S.C. Dep't of Revenue,

> [u]nder Act 70 of 2003, the Department no longer acts on an application for a Seven-Day Permit by determining whether a favorable referendum on minibottles has been obtained in the applicant's county or municipality. Rather, effective June 25, 2003, the General Assembly redirected the Department's focus to a determination of whether the applicant's location is within a county or municipality "where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010.

Piedmont Petroleum Corp. v. S.C. Dep't of Revenue, Docket No. 03-ALJ-17-0337-CC (S.C. Admin. Law Ct. July 20, 2004).

It is important to note also that, as referenced above, the Administrative Law Court's decision in Piedmont Petroleum, supra, which construed Act 70 of 2003, is pivotal in any interpretation of § 61-5-2010. The ALC recognized in its opinion that

> [o]n July 20, 2004, the Administrative Law Court issued an En Banc Order resolving the issue of whether the Department of Revenue has the authority to issue Seven-Day permits in the City of Greenville. See Piedmont Petroleum Corp. v. S.C. Dept. of Revenue, et al., Docket No. 03-ALJ-17-0337-CC (S.C. A.L.C. July 20, 2004 (en banc order). The decision holds that, since Greenville's June 13, 2000 referendum did not specifically authorize the off-premises sale of beer and wine on Sundays, effective

> June 25, 2003, Act 70 of 2003 prohibits the Department from issuing these Seven-Day Permits in the City of Greenville.

(emphasis added). See Piedmont Petroleum, 2004 WL 3200376 (Administrative Law Court December 14, 2004). Thus, Act No. 70 of 2003 clearly separated approval by the voters of liquor in restaurants and bars from the Seven Day beer and wine permits. Pursuant to Act 70, a separate referendum and approval by the voters was required. Judge Kittrell, for the Administrative Law Court, explained in Piedmont Petroleum:

> [p]rior to the enactment of Act 70 of 2003, the clear and unambiguous language of § 61-4-510(A) (Supp. 2002) authorized DOR to issue Seven-Day Permits in any county or municipality "where temporary permits are authorized to be issued pursuant to S.C. Code Ann. § 61-6-2010 . . . after June 21, 1993." In other words, if a county held a successful referendum on temporary permits pursuant to Section 61-6-2010 after June 21, 1993, that referendum automatically authorized the issuance of Seven-Day Permits as well. . . .
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> However, Act 70 of 2003, which became effective June 25, 2003, limited the Department's authority to issue Seven-Day permits in the City of Greenville.
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> Act 70 amends Section 61-4-510(A) to read as follows:
>
> > In counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Section 61-4-120, 61-4-30 and 61-4-140.
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> S.C. Code Ann. § 61-4-510(A) (Supp. 2002) (emphasis added).
>
> Under Act 70 of 2003, the Department no longer acts on application for a Seven-Day Permit by determining whether a favorable referendum or minibottles has been obtained in the applicant's county or municipality. Rather, effective June 25, 2003, the General Assembly redirected the Department's focus to a determination of whether the applicant's location is within a county or municipality "where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010."
>
> Here, the application for a Seven-Day Permit is for a location within the City of Greenville. Thus, the department's authority to issue a Seven-Day Permit to the applicant is dependent upon the language of the city's June 13, 2000 referendum. Greenville's referendum "specifically authorized" the issuance of temporary minibottle licenses, but did not contain specific language authorizing the issuance of off-premises beer and wine permits. Accordingly, Act 70 terminated the

> department's authority to issue Seven-Day Permits in the city of Greenville, and thus, to the applicant in this case.

(emphasis added).

The Circuit Court reviewed the decision of the Administrative Law Court and concurred in that decision in Wal-Mart Supercenter, et al. v. South Carolina Dept. of Revenue, 2015 WL 5621387 (November 7, 2005). According to Circuit Judge Hayes,

> [t]he Administrative Law Court found and concluded that City's Referendum specifically authorized the issuance of off-premises Beer and Wine Permits; accordingly, Act 70 of 2003 terminated the Department of Revenue's authority to issue Seven-Day Beer and Wine Permits in City to Petitioners. I agree.
>
> It is clear to the undersigned that the legislative intent of Act 70 of 2003 was to establish the sole basis upon which the Department can issue a seven day permit. That is, only after a county or municipality has specifically authorized by a referendum, the issuance of such a permit. . . .
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> The Administrative Law Court found that since City's 2000 Referendum did not specifically authorize off-premises Beer and Wine sales on Sundays, Act 70 of 2003 applies to city. Act 70 of 2003 does not provide for any exemptions.
>
> Moreover, "unless the contrary intent is clearly indicated, the amended [s]tatute is to be construed as if the original statute has been repealed, and a new and independent Act in the amended form is adopted." Windham v. Pace et al., 1992 S.C. 271, 6 S.E.2d 270, 276 (1930). Under this construction, the amendment is read as though it were a part of the original statute. Id.
>
> Petitioners argue that the Administrative Law Court erroneously applied Act 70 of 2003 retroactively in denying the Department of Revenue authority to issue seven-Day Beer and Wine Permits. However, I find no retroactive application of Act 70 of 2003. The Administrative Law Court simply followed the established principle that the amendment obliterates the original statute. See Taylor v. Murphy, 293 S.C. 316, 360 S.E.2d 314 (1987); and the Administrative Law Court recognized the General Assembly's mandate not to process those permit applications after June 25, 2003.
>
> Petitioners' hands are not tied by Act 70 of 2003. Petitioners can present a new Referendum to the citizens of the city of Greenville with the language from Act 70 of 2003 specifically presenting the question about the Sunday sale for beer and wine for off-premises consumption.

As discussed above, Act No. 139 of 2005 followed on the heels of Act 70 of 2003, and added part (c) to Subsection (C)(1) of § 61-6-2010. Notably, entire Subsection (C)(1) was reenacted with the addition of part (c). This reenactment established § 61-6-2010(C)(1) as it exists today. Since reenactment of substantially the same statutory provision is to be considered not as an implied repeal of the original statute, but an affirmance and continuation thereof, S.C.

Mental Health Comm. v. May, 226 S.C. 108, 116, 83 S.E.2d 713, 716 (1954), the 2005 Amendment is deemed to be a continuation of Act 70 of 2003.

In the various discussions of legislative history, the meaning of the phrase "where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993" has not been focused upon. Apparently, however, this phrase has an historical basis, one which appears to have continued until this day. At the time Act 164 of 1993 was adopted, three counties and six municipalities had already voted to permit Sunday liquor by the drink. Governor Campbell threatened to veto the 1993 legislation permitting beer and wine to be sold on Sundays for off-premises consumption if a separate referendum was not held in those localities in order to authorize beer and wine. As an editorial noted, "[a]llowing supermarkets and convenience stores in those areas to buy special seven-day permits without an extra vote, as the legislation originally did, would have brought in whatever new revenue is generated as soon as the bill becomes law. But the Governor wanted the people to speak again." The State, June 6, 1993 ("Campbell Gets His Way"). This phrase contained in subpart (c) relating to June 21, 1993 (the effective date of Act 164 of 1993) likely had its origin based upon this dispute between the Governor and the General Assembly.

5. Analysis of § 61-6-2010(C)(1)(c)

We now turn to the text of the pertinent parts of § 61-6-2010. The first sentence of Subsection (C)(1) simply states that "A permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in favor of the issuance of the permit." No limitations or qualifications are contained in this sentence with respect to the off-premises beer and wine permit other than a favorable vote by the relevant jurisdiction. Moreover, that same paragraph states that "one of the following" may be voted on by the electorate – either option (a), (b), or (c). Further, the three options – permits for liquor by the drink (Option a), a vote on both liquor by the drink and off-premises beer and wine (Option b), and only off-premises beer and wine (Option c) are preceded by the word "or," thereby indicating any of the three options are available for approval by the voters. As the Court stated in Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963), ". . . [t]he word 'or' used in a statute, is a disjunctive particle that marks an alternative. . . . The word 'or' used in a statute imports choice between two alternatives and as ordinarily used means one or the other of two, but not both." Here, the General Assembly afforded three separate and independent options in (a), (b), and (c) of § 61-6-2010(C)(1)(c), as reflected by the separation of these alternatives with the word "or."

Rather than viewing these as separate alternatives, our May 6, 2016 Opinion focused primarily upon the inartfully drafted wording of § 61-6-2010(C)(1)(c), which includes the phrase "in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993. . . ." It may be recalled that the legislation which authorized counties and municipalities to vote for off-premises beer and wine became effective, pursuant to Act 164 of 1993 on that precise date. That provision stated that "[t]he special version

of a retail beer and wine permit provided in Section 61-9-312 of the code in Subsection A may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section." (emphasis added). Thus, the referenced language in § 61-6-2010(C)(1)(c) today is remarkably similar to the language used in Act 164 of 1993, and was likely culled therefrom.

Our May 6 Opinion, however, read the language "in case of a county of municipality where temporary permits are authorized to be issued pursuant to this Section as of June 21, 1993" quite literally. We thus concluded that the "plain language" of § 61-6-2010(C)(1)(c) applies only in cases where the consumption of liquor by the drink had been authorized "as of June 21, 1993. Since the Town of Clemson had not approved liquor by the drink until 2014, we deemed § 61-6-2010(C)(1)(c) to be inapplicable." Thus, we concluded that Clemson could not pursue a beer and wine referendum pursuant to this option. Upon reflection, we deem that the focus upon this single phrase blurs the overarching intent and purpose of the provision as a whole.

In short, we think that this earlier reading, while perhaps literally plausible, is not in accord with the intent of the General Assembly. Admittedly, the provision of subpart (c) is inartfully drafted, ambiguous and confusing. It could be read in one of three ways: the interpretation adopted in our May 6, 2016 Opinion; an interpretation based upon approval of a liquor referendum after June 21, 1993 as a condition precedent to a beer and wine referendum; or an interpretation of Subsection (C)(1)(c) which allows a beer and wine referendum, notwithstanding any preceding liquor referendum. While, certainly, the interpretation adopted in our May 6th Opinion plausibly is in keeping with the literal language used in subpart(c), on balance, we believe the better reading is the latter one.

The contemporaneous construction of Act No. 70 of 2003 by the Administrative Law Court in Piedmont Petroleum, supra demonstrates the viability of such an interpretation. There, the ALC concluded that

> [u]nder Act 70 of 2003, the Department no longer acts on an application for a Seven-Day Permit by determining whether a favorable referendum on minibottles has been obtained in the applicant's county or municipality. Rather, effective June 25, 2003, the General Assembly redirected the Department's focus to a determination of whether the applicant's location is within a county or municipality "where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010.

(emphasis added). The ALC clearly interpreted Act 70 of 2003 as redirecting DOR's focus with respect to a beer and wine permit from whether a county or municipality had previously approved liquor by the drink, to whether that county or municipality had voted to approve the off-premises sale of beer and wine in a duly authorized referendum.

Moreover, as we noted, each of the three options in Subsection (C)(1)(c) is followed by the word "or," signifying the disjunctive. Subsection (c) also states expressly that "[t]he question

on the ballot shall be one of the following. . . ." (emphasis added). This would clearly indicate that each question or option stands on its own. Further, the relevant portion of the 2005 Act's title designates the Act's purpose was to "Allow A Referendum for Temporary Permits For The Sale of Beer and Wine." No qualification or condition precedent is indicated in the Title, which is indicative of legislative intent. See Ponder v. City of Greenville, 196 S.C. 79, 12 S.E.2d 851, 855 (1941) ["It is, of course, well settled that the title of an act may be resorted to for light on its construction."].

Further, since Acts 70 of 2003 and 139 of 2005 were enacted, several jurisdictions have approved off-premises sales of beer and wine without having previously voted for liquor by the drink. According to the information provided us, the Town of Chapin voted for beer and wine in November, 2013, with no previous vote for liquor. Likewise, Forest Acres, as well as the Town of Lexington, voted for beer and wine in 2009, without having had a previous favorable referendum on liquor. This contemporaneous construction of the statute reinforces the ALC's interpretation in Piedmont Petroleum. As Judge Hayes wrote in Wal-Mart Supercenter, supra, with the enactment of Act 70 of 2003, the "sole basis" upon which the Department of Revenue may issue a seven-day beer and wine permit is "only after a county or municipality has specifically authorized by a referendum, the issuance of such a permit. . . ."

Thus, it is our opinion that, although ambiguous, the better reading of § 61-6-2010(C)(1) is that subparts (a), (b) and (c) should be interpreted as being separate, independent options. In other words, each option is available to a county or municipality without precondition to prerequisite. While awkward, the phrase "where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993" should not be interpreted as a limitation, but as a description of the Legislature's initial authorization of off-premises beer and wine permits by Act No. 164 of 1993, effective June 21, 1993. The language "where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993" is remarkably similar to the language used in Act 164 of 1993, first authorizing beer and wine permits, effective after such date. When viewed in light of the times and circumstances of enactment, such language likely relates to the insistence by Governor Campbell that the localities which had authorized Sunday liquor by the drink "as of June 21, 1993," needed a separate referendum in order to authorize Sunday sales of beer and wine for off-premises consumption. Moreover, if interpreted differently would mean the words used to introduce options (a), (b), and (c) in § 61-6-2010 (C)(1) – stating that "[t]he question on the ballot shall be one of the following" — would be rendered meaningless. See State v. Doe, 172 P.2d 1114, 1117 (Ida. 2007) [preceding words "one of the following" means "[e]ach statutory ground" is an independent basis]. We do not believe the Legislature intended to focus upon an isolated phrase, contained in subpart (c), to the exclusion of others or the statute in its entirety. See Laurens Co. School Dists. 55 and 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 550, 561 (1992) ["this Court has repeatedly held that a statute shall not be construed by concentrating on an isolated phrase . . . [but] (t)he true guide to statutory construction [is] . . . the language of the statute as a whole considered in the light of its manifest purpose."]. Instead, it is likely that the Legislature merely used the same language as

the 1993 statute used, meaning beer and wine permits could only be issued after that effective date.

6. Your Second Question Relating to the Authority of the Department of Revenue

You have also asked whether "the Code and/or case law authorize the South Carolina Department of Revenue (the 'Department') to cancel certain permits by an affirmative vote of referendums previously held in General Elections, which is what the Department has stated it intends to do as outlined in the attached communications (Attachment 2) dated August 26, 2016." In that letter, the Regulatory Manager-Field Operations Division for the Department wrote:

> [p]lease not the Department's records indicate your county ballot included an incorrect referendum question regarding alcohol sales. Your ballot question (S.C. Code Section 61-6-2010(C)(1)(c)) is only allowed if temporary permits for Sunday sales of alcoholic liquor by the drink were authorized in your county/municipality as of June 21, 1993. Our records show that your county/municipality did not have such authorization as of June 21, 1993.
>
> Your county/municipality should have asked the question found in SC Code Ann. 61-6-2010(C)(1)(b) in its referendum to authorize Sunday sales of beer and wine for off premises consumption. The SC Attorney General issued an opinion on May 6, 2016 that supports this conclusion. A copy is enclosed for your convenience.
>
> The Department must balance the business needs of the permitted locations in your jurisdictions but it must take action to correct this error. While the Temporary Permits in your county/municipality will have to be cancelled, we will provide sufficient time to pursue one of the options below:
>
> 1. You may place the correct question on the ballot according to S.C. Code Section 61-6-2010(C)(1)(b) prior to June 30, 2018 OR
>
> 2. You may await possible Legislative change prior to June 30, 2018.
>
> Accordingly, the Department will cancel the Temporary Permits in your county/municipality as of June 30, 2018.

(emphasis in original).

We begin with the fundamental rule of law that "[a]n agency created by statute has only the statutory authority granted by the legislature. Med. Soc. of S.C. v. Medical University of South Carolina, 334 S.C. 270, 275, 513 S.E.2d 352, 356 (1999). As was said by the Court in

City of Rock Hill v. South Carolina Dept. of Health and Environmental Control, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990),

> [a]s creatures of statute, regulatory bodies such as DHEC possess only those powers which are specifically delineated. City of Columbia v. Board of Health and Environmental Control, 292 S.C. 199, 355 S.E.2d 536 (1987). By necessity, however, a regulatory body possesses not only the powers expressly conferred on it but also those which must inferred or implied to effectively carry out the duties for which it is charged. Id. Also, where an administrative agency such as DHEC is acting for the protection of the health of the environment, the delegation of authority to that agency should be construed liberally. Id.

Moreover, it is well recognized that "[u]nless permitted by the Constitution, . . . under the constitutional principle of separation of powers, an administrative agency may not perform purely judicial functions or interfere with the courts' performance of those functions." 73 C.J.S. Public Administrative Law and Procedure, § 94. Setting aside an election, the results of which have long been determined and codified, is a function of the courts, not an administrative agency.

In addition, our courts are loath to invalidate an election in which the voters have spoken. As our Supreme Court stated in Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 380-81, 537 S.E.2d 543, 546 (2000), "[t]he purpose of an election is to express the will of the electorate" and thus the courts will eschew an interpretation of a statute which "would effectively disenfranchise a voter through no fault of his own" and instead hold that the correct interpretation is one that "is consistent with the function of an election: to declare the will of the electorate."

Further, the Court in Davis v. Town of Saluda, 147 S.C. 498, 145 S.E. 412, 417 (1928), noted that "the overwhelming majority of the voters participating in said election have declared themselves in favor of" the municipal action in question and thus "'[e]very reasonable presumption will be indulged in to sustain an election. . . .'" (quoting Rawl v. McCown, 97 S.C. 1, 81 S.E. 958 (1914)). In addition, in George v. Municipal Election Comm'n. of City of Chas., 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999), the Court explained that "minor violations of technical requirements" may not serve to set aside the will of the voters:

> [t]he Court will employ every reasonable presumption to sustain a contested election, and will not set aside an election due to mere irregularities or illegalities unless the result is change or rendered doubtful.
>
> The statutory provisions regulating the conduct of elections are numerous and detailed. S.C. Code Ann. §§ 7-13-10 to -220 (1976 Supp. 1998); S.C. Const. art II, § 10. This Court, like many others, recognizes that perfect compliance in every instance is unlikely, and the Court is loathe to nullify an election based on minor violations of technical requirements. To that end, courts have developed principles to determine whether such provisions are mandatory or directory.

> As a general rule, such provisions are mandatory in two instances; when the statute expressly declares that a particular act is essential to the validity of an election, or when enforcement is sought before an election in a direct proceeding. After an election in which no fraud is alleged or proven, when the Court seeks to uphold the result in order to avoid disenfranchising those who voted, such provisions are merely directory even though the Legislature used seemingly mandatory terms such as "shall" or "must" in establishing the provisions. "Courts, justly consider the main purpose of such laws, namely, the obtaining of a fair election and an honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end, and in order not to defeat the general design, are frequently led to ignore such innocent irregularities of election officers as are free of fraud, and have not interfered with a full and fair expression of the voter's choice."

See also Douan v. Chas. Co. Council, 357 S.C. 601, 608, 594 S.E.2d 261, 264 (2003) ["This Court will overturn the results of an election, however, when mandatory statutory provisions have been violated and those violations interfere with a full and fair expression of the voters choice."] (emphasis added).

Other decisions of our Supreme Court are in accord. In Taylor v. Town of Atlantic Beach Election Commission, 363 S.C. 8, 12, 609 S.E.2d 500, 502 (2005), the Court stated:

> [i]n the absence of fraud, a constitutional violation, or a statute providing that an irregularity or illegality invalidates an election, we will not set aside an election for a mere illegality. . . . [cases cited]. "Voters who have done all in their power to cast their ballots honestly and intelligently are not to be disfranchised because of an irregularity, mistake, error, or even wrongful act of the officers charged with the duty of conducting the election, which does not prevent a fair election and in some way affect the result." Berry v. Spigner, 226 S.C. 183, 190, 84 S.E.2d 38`1, 384 (1984)....

Further, in Bolt v. Cobb, 225 S.C. 408, 418, 82 S.E.2d 789, 794 (1964), the Court advised that "[e]rrors which do not appear to have affected the result will not be allowed to overturn an election. . . ."

In addition, our opinions recognize this body of law that courts are loath to set aside elections. Former Attorney General McLeod advised in Op. S.C. Att'y Gen., 1962 WL11991 (July 19, 1962) as follows:

> [t]he fact that the results o[of the election] were not published would, of course, affect the matter and would undoubtedly permit an appeal to be made for a reasonable period of time after the statutory limitation. It is my view that fifteen months delay, even if there has been no publication of the results, would probably be considered as an unreasonable delay. In a recent case, it was held that a result brought five months after the announcement of the results of the election would be barred by failure to move promptly. Hite v. West Columbia, 220 S.C. 59, 66 S.E.2d 427. On the other hand, you will notice that in that case the result was announced or

> published whereas in the case detailed by you there was no announcement of the result.

Attorney General McLeod further stated that "in my mind . . . a proceeding to set aside an election more than a year after the vote would be difficult to sustain but I cannot say it would be impossible." And, in Op. S.C. Att'y Gen., 2003 WL 22050874 (August 22, 203), we advised:

> [t]he general rule in South Carolina is that the courts will employ every reasonable presumption in favor of sustaining a contested election. Irregularities or illegalities are held to be insufficient to set aside an election unless the errors actually appear to have affected the result of the election. [citations omitted].

We are aware of no authority vested in the Department of Revenue indirectly (through the licensing process) to set aside validly conducted votes of the people where the results have been certified as correct. Of course, it is well recognized, that opinions of the Attorney General are not binding, but are advisory in nature. There is no basis in the law to invalidate beer and wine permits issued pursuant to a properly certified election based upon an advisory opinion of the Attorney General.

Only a court possesses such authority to set aside an election, and even with respect to a court, that court is loath to set aside an election properly conducted and fairly administered. Thus, it is our opinion that DOR lacks authority to set aside these elections by invalidating or not renewing permits issued as a result of such elections. In any event, our answer to this question is somewhat moot because of our modification of the conclusion of the May 6, 2016 Opinion, as set forth herein.

Conclusion

It is our opinion that the May 6, 2016 Opinion's reading of § 61-6-2010(C)(1)(c), while plausible, based upon a literal reading, is not in accord with the intent of the General Assembly. Admittedly, the language in subpart (c) of § 61-6-2010(C)(1) is inartfully drafted and is susceptible to a literal interpretation, Subpart (c) could be read in one of three ways: the literally-based interpretation adopted in our May 6, 2016 Opinion [deeming § 61-6-2010(C)(1)(c) applicable only as to those counties and municipalities having voted for Sunday liquor by the drink as of June 21, 1993]; an interpretation based upon approval of a liquor referendum after June 21, 1993 as a condition precedent to a beer and wine referendum; or an interpretation of § 61-6-2010(C)(1)(c) which allows a beer and wine referendum for Sunday sales for off-premises consumption in a county or municipality, notwithstanding the lack of any preceding liquor referendum for Sunday sales in such county or municipality. While certainly, the interpretation adopted in our May 6, 2016 Opinion is plausible -- given the literal language -- on balance, it is too restrictive and we believe the better reading is the latter one, affording counties or municipalities the option of any of the three alternatives contained in subparts (a), (b), or (c) of § 61-6-2010(C)(1).

Our analysis for this conclusion is set forth above in considerable detail. In summary, the phrase "in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993," contained in § 61-6-2010(C)(1)(c), should not be interpreted as a limitation or restriction only as to those municipalities or counties which had authorized liquor prior to June 21, 1993. Instead, we believe such phrase is used as a description of the Legislature's initial authorization of off-premises beer and wine permits by Act No. 164 of 1993, effective June 21, 1993. In other words, we do not deem use of this language to be coincidental. The language in § 61-6-2010(C)(1)(c) is virtually identical to that contained in Act No. 164 of 1993, and is likely a reference point to the date when off-premises beer and wine permits were first authorized. To our mind, this language means every county or municipality because it would make no sense to place a limitation on such a vote. To have a separate option for Sunday liquor by the drink and an option for both liquor by the drink and off-premises beer and wine sales on Sunday, yet provide the third option for beer and wine only in certain very limited circumstances (those cities or counties authorizing liquor prior to June 21, 1993), based upon a date of more than twenty years ago, is not rational and could be viewed as absurd. We do not believe the Legislature so intended.

Further, the awkward phrase used in § 61-6-2010(C)(1)(c) has an historical basis, in our view, one which has continued to this day. At the time Act 164 of 1993 was adopted, three counties and six municipalities had already voted to permit Sunday liquor by the drink. Governor Campbell threatened to veto the 1993 legislation permitting beer and wine to be sold on Sundays for off-premises consumption if a separate referendum was not held in those localities in order to authorize beer and wine. As an editorial noted, "[a]llowing supermarkets and convenience stores in those areas to buy special seven-day permits without an extra vote, as the legislation originally did, would have brought in whatever new revenue is generated as soon as the bill becomes law. But the Governor wanted the people to speak again." The State, June 6, 1993 ("Campbell Gets His Way") (emphasis added). Thus, the phrase "counties or municipalities where temporary permits are authorized as of June 21, 1993" most likely referred to Governor Campbell's efforts to ensure that counties and municipalities which already had Sunday liquor "as of June 21, 1993" would have to vote again separately to authorize Sunday beer and wine sales. But such is not to say other counties and municipalities could not authorize Sunday beer and wine sales so long as they too authorized such sales by referendum. Rather than a limitation on other localities after June 21, 1993 wishing to authorize beer and wine sales on Sunday, the phrase in subpart (c) was thus likely a recognition of the Governor's wishes, with respect to those localities which already permitted Sunday liquor by the drink as of June 21, 1993.

Moreover, if interpreted differently, the words used to introduce options (a), (b), and (c) in § 61-6-2010(C)(1) – stating that "[t]he question on the ballot shall be one of the following" – would be rendered meaningless. (emphasis added). Further, when construed in conjunction with Subsection (E), which is a "grandfather" provision pertaining to beer and wine licenses previously issued, the phrase in subpart (c) applicable to June 21, 1993, could be the Legislature's attempt to protect these earlier permits. If so construed, the provision relating to

June 21, 1993 makes some sense. Regardless of the precise meaning of the troublesome phrase relating to June 21, 1993, however, we believe the better reading is that the Legislature intended to make options (a), (b), and (c) equally available to all counties and municipalities without preconditions or prerequisites. That conclusion is consistent with the introductory phrase preceding subparts (a), (b), and (c), i.e. "one of the following" and with the fact that local entities have held referenda to authorize Sunday sales of beer and wine with no previous vote on Sunday liquor by the drink. We believe, in other words, the Legislature intended to provide the voters with a free choice without the restrictions which a literal reading of subpart (c) might impose.

With respect to your second question regarding the Department of Revenue letter, dated August 26, 2016, and DOR's plans to cancel future permits, we certainly respect and highly value DOR's opinion. Moreover, it is also our understanding that DOR does not plan to "cancel" existing licenses, but would not renew licenses as they come up for renewal, based in part on our May 6, 2016 Opinion, with which DOR informs us it agrees. Inasmuch as we are now modifying that Opinion, we would strongly recommend that DOR consider modifying its decision with respect to beer and wine renewals, for the reasons set forth above.

In summary, we know of no authority for DOR, an administrative agency, to effectively "set aside" or invalidate past elections or referenda by the voters. Even a court is loath to invalidate an election after the fact, and thereby disenfranchise the voters. As our Supreme Court has stated on numerous occasions, the Court "will not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful." George v. Municipal Election Comm'n of City of Chas., supra (emphasis added). Thus, even if DOR's interpretation is the correct one legally, and as noted above, we have a different interpretation, it cannot undo what the voters have previously done. Thus, we believe that DOR should carefully examine our modification of May 6, 2016 Opinion, as set forth herein, and reconsider its positon enunciated in the August letter.

We would add that a legislative solution is ultimately best to redress the situation and we so recommend. The Legislature should make clear whether it wishes the voters to have a free choice as to authorizing off-premises beer and wine or not. In the meantime, however, our May 6, 2016 Opinion is modified as discussed above.

Sincerely,

Robert D. Cook
Solicitor General