ALAN WILSON
ATTORNEY GENERAL

January 4, 2017

The Honorable Carl Pennington, IV, Mayor
City of Hartsville
P.O. Drawer 2497
Hartsville, SC 29551

Dear Mayor Pennington:

Attorney General Alan Wilson has referred your letter dated August 23, 2016 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Questions (as quoted from your letter)**:**
As the Mayor of the City of Hartsville, South Carolina (the "City"), I am writing to you on behalf of the City Council of the City to request an opinion regarding the implementation of the "Bailey Bill", which is codified at Sections 4-9-195 and 5-21-140 of the Code of Laws of South Carolina 1976, as amended. The City recently enacted the Bailey Bill by Ordinance No. 4240 to encourage the redevelopment and rehabilitation of historic properties in the City.

Since enacting the Bailey Bill, City staff has wrestled with how the special assessment permitted by the Bailey Bill should be implemented. Particularly, where the City confers the benefits of the Bailey Bill upon a property, thus freezing the assessed value of that property at its pre-rehabilitation value, to which taxing entities should the special assessment apply?

At my request, the City's legal counsel has provided the City with a memo considering the application of the special assessment and potential constitutional issues involving its implementation. The memo provides that a special assessment conferred upon a property by a municipal governing body must be used to calculate the property taxes of all taxing entities. With this conclusion in mind, legal counsel has also reached the conclusion that the scheme of the Bailey Bill, when used by municipalities, is constitutional. I have enclosed the memo for your review. Please rely upon this memo for a more thorough recitation of the facts and the bases for these conclusions.

With this information in mind, I would respectfully request that you review the same questions analyzed by our legal counsel in its memo, which are as follows:

1. Where the governing body of a municipality confers the benefits of the Bailey Bill upon a property , should the special assessment be used to calculate only that portion of the property taxes levied by the municipality, or should the special assessment be used to calculate the property taxes levied by all taxing entities?

2. Assuming the special assessment fixed by a municipality must be used to calculate the property taxes levied by all taxing entities, is it in violation of any provision of the Constitution of South Carolina, 1895, as amended for a municipality to be authorized to exercise this power?

Law/Analysis:
As you mention in your letter, South Carolina Code § 5-21-140 authorizes municipalities to approve special property tax assessments for "rehabilitated historic property" and "low and moderate income rental property" pursuant to § 4-9-195. South Carolina Code § 4-9-195 authorizes a county to grant a special property tax assessment on "rehabilitated historic property" or "low and moderate income rental property" for up to twenty years.

We will attempt to answer your second question first since it encompasses many points we would address in answering your first question. Regarding your second question, this Office has consistently stated regarding the constitutionality of statutes passed by the General Assembly that:

> [L]egislation passed by the General Assembly is presumed constitutional. Horry County School Dist. v. Horry County, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid."). "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." Joytime Distribs. and Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). Moreover, "[w]hile this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional." Op. S.C. Att'y Gen., August 9, 1997.

Op. S.C. Att'y Gen., 2016 WL 4698867 (S.C.A.G. Aug. 29, 2016) (quoting Op. S.C. Att'y Gen., 2010 WL 1808720 (S.C.A.G. April 6, 2010)). Thus, we will begin and end with the presumption that the statutes are constitutional. Moreover, the South Carolina General Assembly's power is plenary, which is distinguishable from the United States Congress in that its powers are enumerated. See, e.g., Op. S.C. Att'y Gen., (S.C.A.G. June 11, 2003) (citing State ex re. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956)). Quoting from a 2011 opinion by this Office, we stated that:

> The power of our state legislature is plenary, and therefore, the authority given to the General Assembly by our Constitution is a limitation of legislature, not a grant ... . This means that "the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitutions."
> *City of Rock Hill v. Harris*, [391 S.C. 149, 705 S.E.2d 53], 2011 WL 204799 (January 24, 2011), quoting *Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133 (1946).

Op. S.C. Att'y Gen., 2011 WL 1444714 (S.C.A.G. Mar. 1, 2011). Furthermore, in addition to its plenary powers, pursuant to Article X, Section 6, the South Carolina Constitution grants the General Assembly authority to grant all political subdivisions of the State the power to assess and collect taxes.

Nevertheless we would be remiss not to bring to your attention that South Carolina Code § 4-9-195 (authorizing the county governing body, i.e. county council, to give special tax assessments) seemingly conflicts with the South Carolina Constitution Article 10, Section 4 ("[t]he General Assembly shall provide for the assessment of all property for taxation, whether for state, county, school, municipal or other political subdivision. All taxes shall be levied on that assessment.") and South Carolina Code §§ 4-9-30(5)(a) (counties have the authority "to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county"), 12-37-90(h) (the county assessor is the "sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department [of revenue]") and 12-37-150 (the county treasurer uses the county auditor's duplicate as the "warrant for the collection of the taxes, assessments, and penalties charged on it").[1] Nonetheless, based on a presumption of validity and the General Assembly's plenary powers, we believe a court will likely uphold the legislation in spite of the apparent conflicts with other laws. As to what basis the court will uphold the legislation on, we believe there are a number of theories a court may use to uphold the legislation. We believe a court's decision will likely contain Article X, Section 4 ("The General Assembly shall provide for the assessment of all property for taxation...") of the South Carolina Constitution. Furthermore, our South Carolina Supreme Court has consistently chosen to interpret a law as constitutional, and we have opined that:

> [i]t is always to be presumed that the Legislature acted in good faith and within constitutional limits ...." Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931). Our Supreme Court has often recognized that the powers of the General Assembly are plenary, unless limited by the Constitution, unlike the federal Congress, whose powers are specifically enumerated. State ex rel. Thompson v. Seigler, 2320 S.C. 115, 94 S.E.2d 231, 233 (1956). Accordingly, any act of the General Assembly must be presumed valid and constitutional. An act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939). Every doubt regarding the constitutionality of an act of the General Assembly must be resolved favorably to the statute's constitutional validity. More than anything else, only a court and not this Office, may strike down an act of the General Assembly as unconstitutional. While we may comment upon what we deem an apparent constitutional defect, we may not declare an act void as unconstitutional. Put another way, a statute, if enacted, "must continue to be followed until a court declares otherwise." Op. S.C. Atty. Gen., June 11, 1997.

Op. S.C. Att'y Gen., 2004 WL 1557095 (S.C.A.G. June 23, 2004). Thus, we will presume a court will find the Bailey Bill constitutional.

Turning now to your first question of whether the special assessment should be levied by all taxing entities, we generally defer to an administrative agency's interpretation of the statutes it administers as long as its interpretation is reasonable. See, e.g., Op. S.C. Att'y Gen., 2005 WL 2250210 (S.C.A.G. September 8, 2005). Thus, we would defer our answer to your first question to the South Carolina

[1] There are other relevant sources and authority not mentioned herein. This is simply an overview of some of the most-notable sources.

Department of Revenue's determination. S.C. Code § 12-4-10 et seq.[2] Nevertheless, we will give our understanding of a court's resolution to your present inquiry. The Supreme Court of South Carolina answered a similar question in a 1982 opinion. See Lee County v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982). In Lee County the Court concluded that the county council, not the auditor, set the millage rate for property taxation within the county. Moreover, the Court outlined the two elements in a property tax as the tax rate and the property value, and it used South Carolina Code §§ 4-9-30 and 12-39-180 in its reasoning. Thus, we would interpret your first question to implicitly ask two questions: whether a municipality is obligated to use the special property tax assessments for "rehabilitated historic property" and "low and moderate income rental property" if approved by the county pursuant to § 4-9-195 and what happens when a municipality votes to authorize the special property tax assessments pursuant to 5-21-140 and the county doesn't.

Ordinarily we would say since § 12-37-30 dates as far back as 1896, that when the General Assembly passed § 5-21-140 authorizing municipalities to approve special property tax assessments, it was the General Assembly's last clear action. However, in 2015 the General Assembly again amended § 12-37-30 to read, as it does now, "shall be levied on the same assessment, which shall be that made for county taxes." Act No. 87, 2015 S.C. Acts. Looking to the Act for evidence of the General Assembly's intent, the heading of the Act states § 12-37-30 as follows:

> **...TO AMEND SECTION 12-37-30, RELATING TO THE ASSESSMENT OF MULTIPLE TAXES TO BE LEVIED ON THE SAME ASSESSMENT, SO AS TO CHANGE THE DESIGNATION OF STATE TAXES TO COUNTY TAXES...**

Id. Contrastingly, the previous version read:

> Taxes for township, school, municipal and all other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for STATE taxes.

S.C. Code § 12-37-30 (1976 Code, as amended) (emphasis added). Therefore, we believe a court will conclude that 2015 amendment to the statute changing the levy to that made for "county" taxes is the best evidence of the General Assembly's intent regarding all taxes levied for municipalities, schools, etc. S.C. Code § 12-37-30. Traditionally courts and this Office have relied on the last legislation passed regarding conflict statutes trumps. Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); Op. S.C. Att'y Gen., 2015 WL 992701 (S.C.A.G. Feb. 12, 2015). However, this Office has previously stated that

> "[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention." State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct. App. 2011). Where the plain language of a statute is ambiguous or "lends itself to two equally logical

[2] Please note the Department of Revenue issued two information letters on S.C. Code §§ 5-21-140 and 4-9-195 dated July 6, 1990 and July 6, 1992. See S.C.Tax.Com. IL-90-23 dated July 6, 1990 (1990 WL 1241405); S.C.TaxCom. IL-90-23 dated July 6, 1992 (1992 WL 367350). We have included a copy of these with this opinion for your reading.

> interpretations," a court may look beyond the borders of the act itself to determine the Legislature's intent. Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001).

2013 WL 5494616, at *5 (S.C.A.G. Sept. 18, 2013). Thus where South Carolina Code § 5-21-140 authorizes a municipality to have the same "powers and authorities conferred upon county governing bodies by Section 4-9-195... mutatis mutandi" we will presume the 2015 amendment to § 12-37-30 did not implicitly overrule it. S.C. Code § 5-21-140. Section 4-9-195 authorizes a preliminary certification by the county governing body and then assessment based on that certification. We interpret the statutes to mean a municipality has the statutory authority to use the county's assessment and then to approve a special property tax discount[3] for "rehabilitated historic property" or "low and moderate income rental property."

The answer to whether a municipality is obligated to use the special property tax assessments for "rehabilitated historic property" and "low and moderate income rental property" if approved by the county pursuant to § 4-9-195 is that we believe a court will determine a municipality is not obligated to use the property tax discount labeled as the "special assessment." If this is not the correct interpretation, then we trust the General Assembly will clarify the law. The Bailey Bill concerns changing a property's assessment to a discounted assessment. S.C. Code § 4-9-195. South Carolina Code § 12-45-60 states that "[c]ounty treasurers are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the order of the auditors of such counties." Section 12-43-210(A) states that:

> [a]ll property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

However, we also recognize that South Carolina Code § 4-9-30(5)(a) authorizes counties "to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county." Thus, the law grants a county authority to tax different areas at different rates relative to their services received. Moreover, as we stated above, South Carolina Code § 12-37-90(h) states that the county assessor is the "sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department [of revenue]." The county assessor must determine assessments of property "in a manner that the ratio of assessed value to fair market value is uniform throughout the county; ... be the sole person responsible for the valuation of real property... and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts." S.C. Code § 12-37-90. Additionally, South Carolina Code § 12-37-150 states that the county treasurer uses the county auditor's duplicate as the "warrant for the collection of the taxes, assessments, and penalties charged on it," and § 12-45-70 requires the county treasurer to collect the property taxes. We believe a court will rely on South Carolina Code § 12-37-30, as revised in 2015, requiring uniform assessment for all taxes based on the county assessment to conclude that the property assessment would apply to all property taxes assessed except for the county's portion of the taxes which would be using the "special assessment" also known as

[3] We interpret S.C. Code § 5-21-140's and § 4-9-195's use of "special assessment" to mean a special discount to the county assessment.

the discounted rate pursuant to § 4-9-195.[4] Furthermore we have opined that "any ambiguity regarding a tax exemption should be strictly scrutinized and that any such ambiguity should be resolved against the exemption and in favor of the tax." Op. S.C. Atty. Gen., 1979 WL 42729 (S.C.A.G. January 2, 1979) (citing Chronicle Publishers, Inc. v. South Carolina Tax Commission, 244 S. C. 192, 136 S.E.2d 261(1964)).

Regarding a municipality's to approve special property tax assessments for "rehabilitated historic property" and "low and moderate income rental property" pursuant to § 4-9-195, South Carolina Code § 5-21-140 grants the same "powers and authorities conferred upon county governing bodies by Section 4-9-195" to municipalities. S.C. Code § 5-21-140. The powers granted to county governing bodies in Section 4-9-195 include:

> (A) The governing body of any county by ordinance may grant the special property tax assessments authorized by this section to real property which qualifies as either "rehabilitated historic property" or as "low and moderate income rental property" in the manner provided in this section. A county governing body may designate, in its discretion, an agency or a department to perform its functions and duties pursuant to the provisions of this section in its discretion.
> ...
> (B)(4) "Special assessment period" means the county governing body shall set the length of the special assessment in its ordinance of not more than twenty years.
> ...

S.C. Code § 4-9-195. Moreover, our Court has previously stated, "[t]he well known maxim applicable to statutes, '*quanda lex aliquid concedit, concedere videtur et Id, per quod devenitur ad illud*'" or, as rendered by Chancellor Kent, 'whenever a power is given by a statute everything necessary to the making of it effectual or requisite to attain the end is implied,' is sufficient authority for this" would apply here. Glenn v. Cnty. Comm'rs of York, 6 S.C. 412, 428-29 (1873). Thus, as stated above, we believe § 5-21-140 grants a municipality the power to authorize a property tax discount the same as a county pursuant to § 4-9-195 for the portion of the municipal taxes only.

Conclusion:

This Office recognizes, as we discussed above, the laws concerning assessments overlap. Nevertheless, it is for all of the above reasons we are in agreement with the portion of the conclusion in your letter that a court will likely find the Bailey Bill constitutional and that South Carolina Code § 12-37-30, as revised in 2015, requires uniform assessment for all taxes based on the county taxes. However, we believe a court will determine that if a county grants a "special assessment" (also known as a discount) pursuant to South Carolina Code § 4-9-195, then the municipality is not required to use that discount for the portion of its taxes. Contrastingly, if a municipality offers a "special assessment" (also known as a discount) pursuant to § 5-21-140, we believe a court will find the special assessment would only apply to the portion of the taxes belonging to the municipality. It is also this Office's understanding that these interpretations are consistent with the Department of Revenue's interpretations and that based on all of the above reasons, we find such interpretations reasonable. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court, the General Assembly, or the

[4] We note S.C. Code § 12-37-40 authorizes a municipality to copy assessments from the county auditor's books.

Department of Revenue 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. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If you have any follow-up questions or additional concerns, please let us know. Otherwise, we hope this answers your questions.

Sincerely,

Anita (Mandi) S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

1990 WL 1241405 (S.C.Tax.Com.)

Tax Commission

State of South Carolina

SUBJECT: SPECIAL PROPERTY TAX ASSESSMENTS FOR REHABILITATED HISTORIC PROPERTIES AND LOW AND MODERATE INCOME PROPERTIES (PROPERTY TAX)

SC Information Letter 90-23
DATE: July 6, 1990

*1 TO: Vicki Jinnette Ringer

Public Information Director

FROM: Jean P. Croft, Tax Analyst

Tax Policy and Appeals Department

REFERENCE:

S.C. Code Ann. Section 4-9-195 (Enacted May 1990)

S.C. Code Ann. Section 5-21-140 (Enacted May 1990)

AUTHORITY:

S.C. Code Ann. Section 12-3-140 (1976)

SC Revenue Procedure # 87-3

SCOPE:

An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

Effective May 14, 1990, Code Sections 4-9-195 and **5-21-140** were enacted allowing the governing body of any municipality or county to grant special property tax assessments to real property qualifying as "rehabilitated historic property" or as "low and moderate income rental property".

Rehabilitated Historic Property. Upon certification by the governing body of the county or municipality, the rehabilitated historic property must be assessed for two years at four percent, and for the next eight years at the greater of (1) forty percent of four percent of the appraised value of the property after rehabilitation, or (2) the tax originally assessed on the uncertified property.

Rehabilitated historic property is eligible for certification if:
1. the owner of the property applies for and is granted historic designation by the county or municipality governing body based on one or more of the following:
a. the property is listed in the National Register of Historic Places;

b. the property is designated as an historic property by the county or municipality governing body and is at least fifty years old; or

c. the property is at least fifty years old and is located in an historic district designated by the county or municipality governing body;

2. the rehabilitation work is approved by the Department of Archives and History as appropriate for the historic building and the historic district in which it is located;

3. within two years after receiving the approval of the rehabilitation plans, the owner or his estate rehabilitates the building;

4. the owner or estate of any property certified as "historic" takes no actions which cause the property to lose the qualities and features which made it eligible for certification; and

5. the rehabilitation began after January 1, 1987.

The Department of Archives and History has the authority to approve rehabilitation work in the county as qualifying for the special tax assessment provided for "rehabilitated historic property". All requests for approval must be accompanied by a nonrefundable application fee of one hundred dollars.

Low and Moderate Income Rental Property. After certification by the governing county or municipality, low and moderate income rental property is assessed an assessment for two years equal to six percent of the appraised value of the property at the time the certification was made, and an assessment for eight years equal to the greater of (1) forty percent of six percent of the appraised value of the property after rehabilitation, or (2) the tax originally assessed on the uncertified property.

***2** Low and moderate income rental property is eligible for certification if:
1. the property provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937;

2. in the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property;

3. the owner takes no actions which cause the property to be unsuitable for designation as "low and moderate income rental property";

4. the rehabilitation began after January 1, 1987;

5. the rehabilitation is located in an area designated as a Low and Moderate Housing Rehabilitation District; and

6. if the property qualifies as "historic" as defined above, then the rehabilitation work must be approved by the Department of Archives and History.

If the property is certified as "rehabilitated historic property" or as "low and moderate income rental property" before the first day of April of a particular year, the special assessment is effective for that year. Otherwise it is effective beginning with the following year.

1990 WL 1241405 (S.C.Tax.Com.)

End of Document

1992 WL 367350 (S.C.Tax.Com.)

Tax Commission

State of South Carolina

SPECIAL PROPERTY TAX ASSESSMENTS FOR REHABILITATED HISTORIC PROPERTIES AND LOW AND MODERATE INCOME PROPERTIES (PROPERTY TAX)

IL-90-23
July 6, 1992

*1 REFERENCE

Section 4-9-195 and 5-21-140, Code of Laws of South Carolina, Annotated, (enacted May 1990).

DISCUSSION

Effective May 14, 1990, §§ 4-9-195 and **5-21-140** were enacted allowing the governing body of any municipality or county to grant special property tax assessments to real property qualifying as "rehabilitated historic property" or as "low and moderate income rental property."

Rehabilitated Historic Property. Upon certification by the governing body of the county or municipality, the rehabilitated historic property must be assessed for two years at 4 percent, and for the next eight years at the greater of (1) 40 percent of 4 percent of the appraised value of the property after rehabilitation, or (2) the tax originally assessed on the uncertified property.

Rehabilitated historic property is eligible for certification if:
1. the owner of the proprty applies for and is granted historic designation by the county or municipality governing body based on one or more of the following;
a. the property is listed in the National Register of Historic Places;

b. the property is designated as an historic property by the county or municipality governing body and is at least 50 years old; or

c. the property is at least 50 years old and is located in an historic district designated by the county or municipality governing body;

2. the rehabilitation work is approved by the Department of Archives and History as appropriate for the historic building and the historic district in which it is located;

3. within two years after receiving the approval of the rehabilitation plans, the owner or his estate rehabilitates the building;

4. the owner or estate of any proprty certified as "historic" takes no actions which casue the property to lose the qualities and features which made it eligible for certification; and

5. the rehabilitation began after Jan. 1, 1987.

The department of Archives and History has the authority to approve rehabilitation work in the county as qualifying for the special tax assessment provided for "rehabilitated historic property." All requests for approval must be accompanied by a nonrefundable application fee of $100.

Low and Moderate Income Rental Property. After certification by the govrning county or municipality, low and moderate income rental property is assessed an assessment for two years equal to 6 percent of the appriased value of the property at the time the certification was made, and an assessment for eight years equal to the greater of (1) 40 percent to 6 percent of the appraised value of the property after rehabilitation, or (2) the tax originally assessed on the uncertified property.

Low and moderate income rental propertyu is eligible for certification if:
1. the propety provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937;

*2 2. in the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property:

3. the owner takes no actions which cause the property to be unsuitable for designation as "low and moderate income rental property;"

4. the rehabilitation began aftr Jan. 1, 1987;

5. the rehabilitation is located in an area designated as a low and moderate housing rehabilitation district; and

6. if the property qualifies as "historic" as defined above, then the rehabilitation work must be approved by the Department of Archives and History.

If the property is certified as "rehabilitated historic property' or as "low and moderate income rental property" before the first day of April of a particular year, the special assessment is effective for that year. Otherwise it is effective beginning with the following year.

a Note: An information letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Tax Commission which are not related to a specific set of facts. Information letters are issued under the authority of s 12-3-140, Code of Laws of South Carolina and South Carolina Revenue Procedure RP-87-3.

1992 WL 367350 (S.C.Tax.Com.)