ALAN WILSON
ATTORNEY GENERAL

July 27, 2017

William F. Halligan, Esq.
Halligan Mahoney & Williams
P.O. Box 11367
Columbia, South Carolina 29211

Dear Mr. Halligan:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter notes that Kershaw County Council members asserted, based on this Office's November 24, 2015 opinion to Senator Paul Thurmond, Op. S.C. Atty. Gen., 2015 WL 8773705 (November 24, 2015), that it is unlawful for the county government to provide school resource officers ("SROs") to the Kershaw County School District's ("District") public schools without cost to the District. Your letter states the following:

> The Attorney General's Opinion to Senator Thurmond appears to conclude that the cost of SROs, as defined in S.C. Code Ann. § 5-7-12(B), is exclusively a "school operating purpose" and that a county cannot levy property taxes for the purpose of paying the cost of SROs because owner-occupied homes are exempt from school operating property tax millage pursuant to S.C. Code Ann. § 12-37-220(B)(47).
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> There are three possible sources of funds to pay the costs of SROs: (1) the school district exclusively; (2) the municipality or county exclusively; or (3) a joint, shared administration, exercise of powers, and costs. The Attorney General's Opinion concludes that SROs are exclusively the financial responsibility of school districts. We submit that, depending on the specific functions SROs are performing in a school setting, a far more sound legal conclusion is that the services of SROs as law enforcement officers are an exclusive and financial responsibility of counties and municipalities. SROs could also be considered a shared function under Art. VIII, Section 13 of the South Carolina Constitution, with school districts, counties, and municipalities having overlapping functions and financial responsibility for public safety at schools.

Law/Analysis

It remains this Office's opinion that a court would likely find school resource officers ("SROs") serve a "school operating purpose," and, therefore, as set forth in S.C. Code Ann. 12-37-220(B)(47), owner-occupied residential property cannot be taxed to finance the costs of their services within a school district. This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Ops. S.C. Atty. Gen., 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Your letter does not cite a change in relevant legal authority nor

has our research uncovered such a change.[1] Therefore, to reverse or modify our prior opinion, we will review its analysis and conclusions for clear error.

The November 24, 2015 opinion concluded that a court would likely find SROs serve a "school operating purpose" based on the statute creating the exemption for owner-occupied primary residences, the plain language of the statute which defines the position and its duties, and the South Carolina Supreme Court's decision in Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue, 383 S.C. 334, 679 S.E.2d 913 (2009). Section 12-37-220(B)(47)(a) exempts "one hundred percent of the fair market value of owner-occupied residential property... from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." The opinion reasoned that whether a county would violate Section 12-37-220(B)(47) by taxing owner-occupied residential property for purposes of financing SROs depended on whether SROs serve a school operating purpose. The opinion examined Section 5-7-12 which defines a SRO as:

> [A] person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.

S.C. Code Ann. § 5-7-12(B) (emphasis added). A SRO is assigned to a school district as follows:

> The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county.

S.C. Code Ann. § 5-7-12(A) (emphasis added). The opinion found that the plain language of the title "school resource officer", the assignment to "work within the school system," and the primary duty to "act as a law enforcement officer, advisor, and teacher for that school district," clearly and unambiguously places SROs within the meaning of "school operating purposes." See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). The opinion also relied on the South Carolina Supreme Court's explanation of what is encompassed by "school operating purposes" in Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue, supra. The Court's analysis of which expenses are included within term "school operating purposes" is as follows:

> Significantly, in the business realm, the phrase "operating expenses" has been defined to "include payroll, sales commissions, employee benefits and pension contributions,

[1] Legislation was introduced during this year's legislative session which would amend the primary duties of SROs to strike "the responsibility to act as [an]... advisor, and teach for that school district." H.B. 3051, § 5, S.C. Gen. Assemb., 122 Sess. 2017-2018. If subsequently enacted, such an amendment could be viewed as an expression of legislative intent that SRO services should not be interpreted as a "school operating purpose" but, rather, as an exclusive law enforcement purpose.

> transportation and travel, **amortization and depreciation, rent,** repairs, and taxes, etc."(emphasis added). Furthermore, to limit the definition of "school operating purposes" to only expenses incurred for the administration of a school district would be myopic. Logically, a school district cannot operate without all of its component parts, which include school administration expenses, day-to-day expenses, and most importantly the actual facilities which are funded through lease/installment-purchase payments. Thus, we find the payments for lease/installment-purchase agreements would be exempt under section 12–37–220(B)(47)(a) and reimbursable under section 11–11–156(A)(1).

383 S.C. at 346, 679 S.E.2d at 919.[2] Several of the costs incurred for SRO services, such as payroll, employee benefits, and pension contributions, are listed by the Supreme Court as expenses normally included within the term "operating expenses" and would be considered within the meaning of the term "school operating purposes" when incurred by a school district. This Office finds no clear error in the November 24, 2015 opinion's analysis and, therefore, declines to overrule its conclusion that the cost of providing SROs to a school district cannot be paid with public funds collected from property taxes on owner-occupied primary residences.

Further, our November 24, 2015 opinion stressed that because tax revenue from owner-occupied residential property cannot be used by a school district to directly finance the salaries and costs of SROs, it also necessarily follows that a local governing body may not indirectly finance SROs by donating or contributing such officers' salaries to a school district when such expenses are paid with public funds from such tax revenue. Richardson v. Blalock, 118 S.C. 438, 110 S.E. 678, 679 (1922) ("That which cannot be done directly cannot be done indirectly."). However, our prior opinion did not conclude that a county or municipality is prohibited from financing SROs by using tax revenues from a separate source.

The South Carolina Supreme Court has held that political subdivisions can expend public funds for valid public purposes. See Nichols v. S.C. Research Auth., 290 S.C. 415, 425, 351 S.E.2d 155, 160 (1986) ("[A] public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division."); Anderson v. Baehr, 265 S.C. 153, 162, 217 S.E.2d 43, 47 (1975). While SROs serve a

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[2] The Court anticipated future financial consequences as a result of its ruling as follows:

> We are cognizant that our decision may have deleterious future financial consequences in terms of treating traditional general obligation debt transactions differently than alternative lease/installment-purchase agreements and establishing the base amount for tier three reimbursements. However, we are confined by the rules of statutory construction in analyzing the question presented by this declaratory judgment action. Because our role is limited to ascertaining and effectuating the intent of the General Assembly, we believe it is for the General Assembly to revise the statutes at issue to address these potential problems.

383 S.C. at 350, 679 S.E.2d at 921. While there have been several amendments to S.C. Code Ann. § 12-37-220 since Berkeley Cty. Sch. Dist., none have changed the terms of subsection (B)(47). This strongly suggests the Court's holding is consistent with the General Assembly's intent. Similarly, there has been no revision to S.C. Code Ann. § 5-7-12 following this Office's November 24, 2015 opinion. Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) ("[I]t is well established 'that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views [ex]pressed therein were consistent with the legislative intent.'").

"school operating purpose," such officers' primary duties include acting "as a law enforcement officer." S.C. Code Ann. § 5-7-12(B). The South Carolina Code of Laws recognizes that a county's enumerated powers include enacting legislation "in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them." S.C. Code Ann. § 4-9-25 (emphasis added); see also S.C. Code Ann. § 4-9-30 (counties' designated powers, except under board of commissioners form, includes "assess[ing] property and levy ad valorem property taxes and uniform service charges... for functions and operations of the county, including, but not limited to... public safety, including police and fire protection..."); S.C. Code Ann. § 5-7-30 (powers conferred to municipalities "include[] the exercise of powers in relation to... law enforcement").

Based on the authorities cited above, it is clear that counties and municipalities may generally expend public funds on law enforcement as a valid public purpose. Yet, as it remains this Office's opinion that SROs would likely be found to serve "school operating purposes," the sources of public revenue from which local governing bodies may fund SROs is limited by the specific exclusion in Section 12-37-220(B)(47)(a) on taxation of owner-occupied residential property. See Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) ("[W]here two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute."). Therefore, it is this Office's opinion that a court would likely find local governing bodies may contribute or donate public funds for the costs of providing SROs to a school district so long as such funds do not include revenue from property taxes on owner-occupied residential property.

Conclusion

It remains this Office's opinion that a court would likely find a school resource officer's duties are properly classified as serving a "school operating purpose" as used in S.C. Code Ann. § 12-37-220(B)(47)(a), and, therefore, property taxes on owner-occupied residential property cannot be used to pay for the costs of providing such officers to a school district. However, we clarify that our opinion does not conclude that a county or municipality would be in violation of S.C. Code Ann. § 12-37-220(B)(47)(a) if the respective local governing bodies provide public funding for SROs from a distinct source of tax revenue. It is this Office's opinion that a court would likely find local governing bodies may contribute or donate public funds to defray the costs of providing SROs to a school district so long as such funds do not include revenue from property taxes on owner-occupied residential property. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly 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 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 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General