



ALAN WILSON
ATTORNEY GENERAL

April 27, 2020

The Honorable Marvin R. Pendarvis
Member
South Carolina House of Representatives
P.O. Box 60715
North Charleston, South Carolina 29419

Dear Representative Pendarvis:

We received your letter requesting an expedited opinion from this Office addressing the ability of the South Carolina State Housing Finance and Development Authority ("SC Housing") to use the SC Housing Trust Fund to fund a temporary rental assistance program to assist South Carolinians who may be affected by COVID-19.

Law/Analysis

Article 4 of chapter 13 of title 31 of the South Carolina Code (2007) contains the South Carolina Housing Trust Fund Act (the "Act"). S.C. Code Ann. §§ 31-13-400 *et seq.* The Act established the South Carolina Housing Trust Fund (the "Trust Fund"). Section 31-13-450 of the South Carolina Code (2007) governs the use of Trust Fund monies.

(A) Except as otherwise provided in this section, all monies deposited in the fund must be used to increase the supply of safe, decent, and affordable housing for members of the very low or lower income households within this State. These monies must be used to:

- (1) encourage affordable home ownership and rental housing opportunities for the very low and lower income individuals and households;
- (2) assist in the creation and preservation of safe, decent, affordable, and sanitary housing for the very low and lower income persons through the provision of loans and grants;
- (3) increase the availability of affordable rental and owner-occupied housing for special needs populations, including housing for the elderly, the handicapped, and the homeless;

(4) promote creativity and flexibility in the design of programs at the local level to bring about the creation of safe, decent, affordable, and sanitary home ownership and rental housing in quality living environments;

(5) maximize the utilization of federal housing assistance programs and leverage all other public and private resources; and

(6) establish a spirit of partnership between government, nonprofit, and for-profit concerns and those in need of affordable housing.

(B) Monies deposited in the fund must be used to finance, in whole or in part, affordable housing projects and developments eligible under this section. Monies deposited in the fund may be used to make loans, grants, or provide for matching funds to secure financial assistance made available through federal funding and other programs to eligible applicants for the provision of affordable housing. Only nonprofit sponsors are eligible to receive grants for the implementation of an affordable housing proposal. Funds for resident services programs which further independence and responsibility may be included in a proposal submitted to the fund but may not exceed two percent of the total funds requested in the proposal.

(C) In evaluating proposals for the use of monies deposited in the fund, the board shall ensure, to the extent feasible, that monies are allocated to affordable housing for home ownership or rental housing developments which provide housing to members of very low income households. The fund may provide for appropriate penalties or fees for removal of the lien in its loan documents or contractual documents if monies are not used to provide housing for members of very low or lower income households for a period of at least twenty years. All prepayments must be returned to the fund.

(D) The board shall ensure that monies deposited in the fund are allocated only to projects which are eligible projects. An eligible project consists of one or more residential buildings containing similarly constructed units, the site on which the building is located, and any functionally related facilities. Multiple buildings may constitute a project only if bounded together as a result of proximate location or common ownership and financing.

(E) The board may approve the withdrawal of monies deposited in the fund for the acquisition and rehabilitation of substandard housing units, new construction of housing units, to provide assistance for the construction or rehabilitation of shelters for the homeless, or for such other programs which increase the supply of safe, decent, and affordable housing for members of

The Honorable Marvin R. Pendarvis
Page 3
April 27, 2020

very low or lower income households which the board considers appropriate to meet the purposes stated in this section.

S.C. Code Ann. § 31-13-450.

Section 31-13-450 does not specifically state monies from the Trust Fund may be used to provide rent assistance to South Carolina residents. However, we are of the understanding that SC Housing administers the Housing Choice Voucher Program, a federal Housing and Urban Development (HUD) program that provides rent assistance to low income families through Public Housing Agencies by providing payments to directly to housing providers on behalf of qualified recipients. Nonetheless, we understand no Trust Fund monies are used in the administration of this program. Neither this Office, nor any court to our knowledge, have addressed the ability of SC Housing to administer its own rental assistance program. Thus, to answer your question, we must evaluate whether the Legislature intended for Trust Fund to be used for this purpose.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005). “The legislature’s intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” Id. (citations omitted).

Section 31-13-450 makes clear the overall intention of the Act is “to increase the supply of safe, decent, and affordable housing for members of the very low or lower income households within this State” and Trust Fund monies may only be used for this propose. S.C. Code Ann. § 31-13-450(A). Moreover, section 31-13-450(E) states:

The board may approve the withdrawal of monies deposited in the fund for the acquisition and rehabilitation of substandard housing units, new construction of housing units, to provide assistance for the construction or rehabilitation of shelters for the homeless, or for such other programs which increase the supply of safe, decent, and affordable housing for members of very low or lower income households which the board considers appropriate to meet the purposes stated in this section.

(emphasis added). In this provision, the Legislature appears to give the Board of Commissioners for SC Housing (the “Board”) broad authority in using Trust Fund monies so long as they are for “programs which increase the supply of safe, decent, and affordable housing for members of very low or lower income households.” S.C. Code Ann. § 31-13-450(E).

The Honorable Marvin R. Pendarvis

Page 4

April 27, 2020

In our discussions with SC Housing, we understand the COVID-19 pandemic is having an effect on housing in South Carolina. In a recent letter to our Office, SC Housing stated:

As unemployment numbers climb and many suffer a decrease in compensation, the ability to meet monthly rent obligations also decreases. While evictions have been temporarily stayed in South Carolina, rent payments remain due and many renters will face eviction proceedings when the stay is lifted. Owners of rental property, likewise, will suffer a loss of rental income, causing further instability in housing for South Carolinians and our economy. Loss of such rental income could lead to foreclosure actions against the owners once the, also temporary, stay of foreclosures is lifted, thus potentially resulting in the current renters being faced with a new property owner who may elect to discontinue renting the property.

Accordingly, the COVID-19 pandemic could result in both a decrease in the supply of affordable housing and an increase in low to very low income households seeking affordable housing in the State. As such, a court could find a temporary rental assistance program could act broadly “to increase the supply of safe, decent, and affordable housing for members of the very low or lower income households within this State” or specifically to assist in “the preservation of safe, decent, affordable, and sanitary housing for the very low and lower income persons through the provision of loans and grants.” S.C. Code Ann. §§ 31-13-450(A), 31-13-450(A)(2). However, the determination of whether a rental assistance program in fact accomplishes the intent of the Act involves a factual determination, which is beyond the scope of an opinion of this Office. See Op. S.C. Att’y Gen., 2010 WL 3896162 (Sept. 29, 2010) (“This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court”). Therefore, while we believe a court could determine such a program is within the intent of the Act, only a court could make such a determination with certainty.

In addition, we note section 31-13-450 places several restrictions on the use of Trust Fund monies in regard to how and to whom payments are made. From your letter, we understand the program would involve making payments directly to landlords similar to the HUD voucher program. Section 31-13-450(B) requires the Trust Fund be used for loans, grants, or matching funds to secure federal financial assistance and states “[o]nly nonprofit sponsors are eligible to receive grants” Thus, this provision may restrict type of payments made to for-profit landlords. Further, section 31-13-450(C) places responsibility on the Board to ensure funds go to provide housing to “very low income households.” The Act defines a “very low income household” as “a household that has an annual income adjusted for household size of less than fifty percent of the median income of the area of residence as determine by the United States Department of Housing and Urban Development.” Accordingly, in the spirit of the Act, the Board would need to consider whether the rental assistance program serves very low income households. Under section 31-13-450(D), the Board would also need to consider whether recipients of rental assistance meet the requirements of “eligible projects” as defined in this

The Honorable Marvin R. Pendarvis
Page 5
April 27, 2020

provision as “one or more residential buildings containing similarly constructed units, the site on which the building is located, and any functionally related facilities.”

Conclusion

The South Carolina Housing Trust Fund Act does not specifically authorize the establishment of a rental assistance program. The clear intent of the Act as expressed by the Legislature is to increase the supply of safe, decent, and affordable housing for very low or lower income households in South Carolina. Moreover, the Legislature appears to have given broad discretion to the Board to expend funds from the Trust Fund in accordance with this purpose. Thus, a court very well may find the implementation of a rental assistance program serves the purposes of the Act given the potential decrease in supply and increase in demand for affordable housing by very low and lower income households due to the COVID-19 pandemic. However, because this determination requires assessment of the facts, which is beyond the scope of an opinion of this Office, only a court may make this decision. In addition, we caution the Board to be cognizant of the restrictions contained in Act regarding the programs that may be funded and how money may be disbursed from the Trust Fund in approving such a program for funding from the Trust Fund.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General