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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 23, 1998

The Honorable Earle E. Morris, Jr.
Comptroller General
State of South Carolina
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

You have been asked by the Town of Hilton Head, by letter through its acting town manager, to defer deductions from the state shared revenues in response to real estate transfer fees which the town continues to collect pending resolution of the issue by the General Assembly. The letter also provides that the Town of Hilton Head continued to collect real estate transfer fees after December 31, 1996, pending resolution by the General Assembly.

Prior to its amendment in 1997, Section 6-1-70 of the South Carolina Code of Laws read as follows:

The governing body of each county and municipality which enacts and collects any fee which is charged on the transfer of real estate shall, not later than ten days after the close of a fiscal year quarter, remit to the State Treasurer an amount equal to the amount of real estate transfer fees collected in the previous fiscal year quarter. The county and municipality may voluntarily elect to have the State Treasurer or Comptroller General, as appropriate, deduct the amount required to be remitted from any distributions authorized to be made to the county or municipality under the Aid to Subdivisions.

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Section 6-1-70 was amended by Act No. 155, Part II, §§ 71 and 72.¹ The section was amended to read:

(A) Except as provided in subsection (B), the governing body of each county, municipality, school district, or special purpose district may not impose any fee or tax of any nature or description on the transfer of real property unless the General Assembly has expressly authorized by general law the imposition of the fee or tax.

(B) A municipality that originally enacted a real estate transfer fee prior to January 1, 1991 may impose and collect a real estate transfer fee, by ordinance, regardless of whether imposition of the fee was discontinued for a period after January 1, 1991.

Also included in Sections 71 and 72 of Act No. 155, Part II, but not codified, are the following provisions:

Section 71B. The local governing bodies that enacted and collected fees on transfers of real estate pending resolution of their dispute over the requirement that the collected funds be remitted to the State Treasurer, are allowed to use those funds collected as of July 1, 1997, for their originally intended specific local purposes, or in the alternative, to refund the fees to those who paid them.

Section 72B. The State Treasurer is directed to return any real estate transfer fees which have been remitted to his office to the local governing body which remitted those funds so the funds may be used for their originally intended specific local purposes.

As you can see, these recent amendments to Section 6-1-70 have clarified the questions raised by the Town of Hilton Head. The General Assembly has eliminated the provision of Section 6-1-70 which requires the local governing body to remit to the State Treasurer the real estate transfer fees. The General Assembly has also eliminated the provision allowing the set-off from the State Aid to Subdivisions Act. Therefore, the question of deferring the deductions of State Aid to Subdivisions Act money in lieu of continued collection of real estate transfer fees has been resolved by the General

¹ Amendments to Section 6-1-70 can also be found in Act No. 138, Section 5, of 1997, a section virtually identical to Act No. 155, Part II, §§ 71 and 72.


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Assembly's elimination of the aforementioned language of Section 6-1-70 and amendments thereto.

In regards to the Town of Hilton Head continuing to collect real estate transfer fees pending resolution by the General Assembly, the amendment provides those local governing bodies that enacted and collected fees on transfers of real estate pending resolution of the dispute over whether these funds must be remitted to the State Treasurer are allowed to use those funds collected as of July 1, 1997 for their originally intended purpose or refund the fees to those who paid them. Further, the State Treasurer has been directed to return any real estate transfer fees which have been remitted to his office to the local governing body which remitted those funds.

With kindest regards, I remain

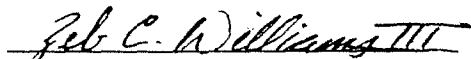
Very truly yours,



Paul M. Koch

Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III

Deputy Attorney General