



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

May 20, 2004

Stephen G. Riley, Town Manager  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, South Carolina 29928

Dear Mr. Riley:

In a letter to this office you raised several questions regarding the Capital Project Sales Tax Act codified as S.C. Code Ann. Sections 4-10-300 (Supp. 2003). Section 4-10-310 authorizes a county governing body to impose a one percent sales and use tax in accordance with a referendum "for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money. The revenues collected pursuant to this article may be used to defray debt service on bonds used to pay for projects authorized in this article." Pursuant to Section 4-10-330, the sales and use tax authorized by such Act

...is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission...subject to referendum approval in the county. The ordinance must specify:

- (1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within or without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:
  - (a) highways, roads, streets, and bridges;
  - (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of these projects;
  - (c) cultural, recreational, or historic facilities, or any combination of these facilities;
  - (d) water, sewer, or water and sewer projects;
  - (e) flood control projects and storm water management facilities;
  - (f) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (e) of this subsection;
  - (g) any combination of the projects described in subitems (a) through (f) of this item;....

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Referencing such provisions, you have asked whether a project authorized by such provision, such as a road, courthouse, or recreational facility, includes the necessary right of way or property and all costs of designing, permitting, bidding, building, and overseeing construction of the "project". First and foremost, it is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). A statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949). A sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Consistent with such, while not specified by the statute, it is my opinion that all necessary matters incidental to the project, such as those you referenced, would be included in the authorization. It would be an absurdity to conclude that the project itself would be authorized but not the matters incidental to the project.

You also asked whether it is reasonable to include as a proposed project in the list of projects submitted to the voters, a proposal to acquire land for future recreational facilities. As you described your question, funds would be allocated by the referendum to acquire land for a recreational facility but construction of the improvements would have to be budgeted from a different source of revenue or at a different point in time.

As set forth by Section 4-10-330, the General Assembly authorized the expenditure of sales and use tax proceeds for certain projects and specified the types of projects for which such expenditures may be made. A listing of such suggested projects set forth in such statute reflects tangible, permanent types of projects and facilities. Generally, public funds may be expended only for designated purposes as authorized by the General Assembly. See: Ops. Atty. Gen. dated December 4, 1985 and August 10, 1981. As stated in an opinion dated October 1, 2001, "(i)t is well recognized that public funds may be expended only for their designated purpose." Consistent with such, it does not appear that funds could be used to acquire only land for a recreational facility where the actual construction of the improvement would be budgeted from a different source of revenue or at a different point in time.

You next asked whether it is possible to put before the voters in the referendum a proposal to acquire land for a recreational facility and to include sufficient funds to build a "phase one" of a park, but then leave funding of a future phase or phases to another time and another source of funding. Again, as set forth in the response to question two, the General Assembly authorized expenditures for designated types of projects. Consistent with such, expenditures may be authorized for only for these types of projects. Your question regarding a proposal to acquire land for a recreational facility and build only a "phase one" of the project arguably could be construed as inconsistent with such approved use of funds. In such circumstances, there could only be token compliance with the mandate for construction of the types of facilities for which such funds may be

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expended. If such would be the case, then such expenditure would not be authorized. Therefore, in my opinion, it is questionable as to whether such a limited building plan would be authorized.

You also asked how specific must a referendum proposal be in describing a proposed recreational facility or facilities in a question posed for voters. You indicated that Beaufort County and the various municipalities have adopted recreational plans that call for parks in general areas but are not identifying specific sites unless the land is already in public ownership. You asked whether the question can be phrased in a manner such as "recreational facilities as called for in the adopted county or municipal recreation plans" or "an active recreational complex in southern Beaufort County" or must a specific parcel to be acquired for a specific type of park be identified.

In an opinion of this office dated November 7, 2001, it was stated that as to another ballot for a sales tax referendum

In the absence of any constitutional or statutory mandate to the contrary, it is not necessary that a referendum ballot set forth the details of a proposition to be voted upon..(A) ballot may be sufficient if it presents the proposition in such a manner that the voter has a clear opportunity to express his choice either for it or against it...(The opinion concluded that)...the county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of the funds...(Nevertheless)...I would encourage as much disclosure to the public as practicable.

Reference was made to a decision of the State Supreme Court in Sarrat v. Cash, 103 S.C. 531, 88 S.E. 256 (1916) where the Court addressed the allegation by voters that they had approved a bond referendum based on representations made by school trustees that a school would be built in a certain location where upon approval of the referendum, the school trustees decided to build the school elsewhere. The court denied the plaintiff's request to enjoin the trustees from building the school at a different locality and, thereby, upheld the trustees' right to exercise discretion in the matter. The Court stated that the trustees

...could not, therefore, bind themselves by promises or representation, so as to divest themselves of the right to a free and untrammelled exercise of their judgment and discretion for the best interests of their district at the time they were required to act as a body...It would be contrary to public policy to allow public officers who are charged with the duty of exercising their judgment and discretion...to bind or fetter themselves by promise or presentation to individuals or to electors of...the district so that they could not, at all times, act freely and impartially...

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Therefore, while discretion is allowed public officers in the manner set forth above, it was also stated in an opinion of this office dated August 22, 2003, that the general purpose of a referendum "...must be stated with sufficient certainty to inform and not mislead the voters as to the object in view." See also: Dick v. Scarborough, 73 S.C. 150, 53 S.E. 86 (1905) ("voter should have reasonable notice of the (bond) election and the issue it involved."); Winterfield v. Town of Palm Beach, 455 So.2d 359 (Fla. 1984) (ballot for bond referendum may not fail to adequately inform voters of the proposed project); McNichols v. City and County of Denver, 209 P.2d 910 (Colo. 1949) (question submitted to the electors must not be misleading, but must be specific).

Consistent with such, as to questions submitted as part of a bond referendum, while the question need not absolutely pinpoint a precise location, the identification of the location must be specific enough to adequately notify the voter of the general location of a proposed recreational facility or facilities in order that the voter may make an informed choice..

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General