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ATTORNEY GENERAL

January 24, 2006

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Dear Ms. Clark:

From your letter addressed to this Office, we understand Colleton County (the "County") retained you to represent it with respect to two petitions received by the Colleton County Council (the "Council"). Thus, we presume you are submitting your letter and associated opinion request on behalf of the Council. In your letter you state the Council received the petitions from

the residents of the Town of Edisto Beach and an area contiguous thereto (together, the "Area") in which certain residents of the Area request the County to designate the Area as a "special tax district" pursuant to Section 4-9-30 of the South Carolina Code. The Petition appears to request such designation for the purpose of general operating taxes and fees imposed by the County, and does not specify a particular service as the basis for the proposed district. The letter transmitting the Petition states as its justification the need to "set taxes on Edisto Beach and the contiguous areas at a reduced rate to put our taxes in line with the services we receive."

Attached to your letter, we found the petitions and the letter transmitting the petitions. Indeed, the petitions, which are for the most part identical, state the purpose of the proposed special tax district is "to authorize Colleton County to levy property taxes and services charges within the Special Tax District based on a taxation rate that reflects the nature and level of services provided by the County to taxpayers having real property located within the geographic boundaries of the Special Tax District." In regard to the two petitions, you request our guidance on the following four questions:

- (1) Does the creation by a County of a special tax district that is not based on "special benefits" to the area of that district but instead intended to allow residents of the district to "opt out" of general taxation by the County result in an unconstitutional

non-uniform tax within that area pursuant to Article X, Section 6 of the South Carolina Code?

- (2) May a County use the provisions of Section 4-9-30 of the South Carolina Code to create a special tax district that is not based on a specific service or a set of services to the area of the district, but instead on general government services to such area?
- (3) Must a County that receives a petition pursuant to Section 4-9-30(5)(a)(i) of the South Carolina Code call for the referendum in question if the petition is in proper form with the requisite number of electors' signatures?
- (4) Must a County create the district if the referendum provided for in Section 4-9-30(5)(a)(i) is favorable to the creation of the district, or is the creation of the district still within the discretion of Council?

Based on a review of the pertinent constitutional and statutory authority, in our opinion, the a special tax district which allows residents to opt out of general taxation by a county would violate Article X, Section 6 of the South Carolina Constitution. In addition, the services to be rendered by a special tax district must be specified in order to create such a special tax district pursuant to section 4-9-30 of the South Carolina Code. If residents in a proposed special tax district submit a petition that complies with the requirements of section 4-9-30(5)(a)(i), the County must hold an election allowing all residents of the proposed special tax district to vote to approve the creation of the district. However, if such residents vote to approve the district, the County retains discretion to decide whether or not to enact an ordinance creating the district.

### **Law/Analysis**

#### **Creation of a Special Tax District**

Your first and second questions deal with the circumstances under which a special tax district may be created. Thus, we begin our analysis with a review of the constitutional and statutory authority for the creation of such special tax districts.

In reviewing the pertinent constitutional and statutory authority, we keep in mind the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Croft v. Old Republic Ins. Co., 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005). "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." Georgia-Carolina Bail Bonds, Inc. v. County of

Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). “Clear and unambiguous words in a statute should be given their plain and ordinary meaning.” Brown v. County of Berkeley, 366 S.C. 354, \_\_\_, 622 S.E.2d 533, 537 (2005). In determining the intent of the legislature, one should consider the language of the statute as a whole. Croft, 365 S.C. at 412, 618 S.E.2d at 914. “All provisions of a statute must be given full force and effect.” Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002). Statutes shall be construed to “make all of its parts harmonize with each other and render them consistent with its general scope and object.” Horry County Sch. Dist. v. Horry County, 346 S.C. 621, 630, 552 S.E.2d 737, 741 (2001) (quoting Davis v. County of Greenville, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996)). Rules similar to those applied in construction of statutes are applied when construing the South Carolina Constitution. Fraternal Order of Police v. South Carolina Dep’t of Revenue, 352 S.C. 420, 427, 574 S.E.2d 717, 721 (2002).

Article X, Section 6 of the South Carolina Constitution (Supp. 2005), dealing with the assessment and collection of taxes in political subdivisions, provides, in relevant part:

The General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed.

(emphasis in original). Article VIII, Section 7 of the South Carolina Constitution (1976), pertaining to counties, states in pertinent part: “The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.” In section 4-9-30 of the South Carolina Code (Supp. 2005), the General Assembly afforded the power to create special tax districts to county governments. Specifically, this statute provides counties with the power 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, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire

protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

Whether or not a special tax district can be created to “allow the residents of the district to ‘opt out’ of general taxation by the County” is a matter of first impression and thus, we are unable to find a case or prior opinion of this Office dealing with this issue. However, employing the rules of statutory construction as set forth above, in our opinion, the creation a special tax district under these circumstance would result in a violation of the South Carolina Constitution.

Article X, Section 6 of the South Carolina Constitution plainly sets forth: “Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes.” This provision then carves out an exception for “properties located in an area receiving special benefits” and allows for “special levies” on such properties. This provision does not, however, provide properties that do not receive special benefits may be permitted to receive special credits or reductions in taxes. This interpretation of Article X, Section 6 is consistent with the numerous opinions of South Carolina Supreme Court holding “[t]he plain language of Article X, § 6 does not impose uniformity on the distribution of taxes. Under Article X, § 6, uniformity is obtained when property taxes are levied equally within the county.” Davis v. County of Greenville, 313 S.C. 459, 464, 443 S.E.2d 383, 386 (1994). See also Westvaco Corp. V. South Carolina Dep’t of Revenue, 321 S.C. 59, 62, 467 S.E.2d 739, 741 (1995); Yeargin v. Wicker, 295 S.C. 521, 525, 369 S.E.2d 844, 846 (1988).

Article VIII, Section 7 of the South Carolina Constitution and section 4-9-30 of the South Carolina Code provide to counties the “power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.” Although this constitutional provision and this statute appear to afford counties with the ability to charge different tax rates to different residents in the County, when read in conjunction with Article X, Section 6, we find these provisions do not abrogate the requirement that property taxes be uniformly levied. Rather, these provisions simply allow counties to create special levies for special benefits received as provided in Article X, Section 6. Therefore, the South Carolina Constitution and section 4-9-30 of the South Carolina Code do not provide an express mechanism in which residents may use a special tax district to reduce their general obligation to pay ad valorem taxes imposed by the County. Furthermore, in our opinion, and for a county to use a special tax district for this purpose would circumvent the uniformity in taxation requirement of Article X, Section 6 of the South Carolina Constitution and result in a constitutional violation.

In analyzing the constitutionality of the proposed special tax district, we also find it imperative to note a recent South Carolina Supreme Court decision dealing with uniformity of taxation. In City of North Charleston v. County of Charleston, 363 S.C. 527, 611 S.E.2d 920 (2005), the Supreme Court addressed the issue of uniformity of taxation with regard to Article X, Section 3 of the South Carolina Constitution (requiring uniformity in the enactment of property tax

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exemptions). The Court found a statute allowing counties to enact property tax caps unconstitutional, stating: "Where our Constitution requires statewide uniformity, a local option law is not valid." *Id.* at 530, 611 S.E.2d 920, 922. Although the issues as presented to us, pertain to other provisions of the South Carolina Constitution, we find the Supreme Court's holding in City of North Charleston instructive. The creation of a special tax district for the purpose of lowering certain residents ad valorem taxes, would result in the destruction of the uniformity of taxation throughout the County. In addition, a court may find such a special tax district creates a property tax exemption for those residents, violating Article X, Section 3 of the South Carolina Constitution under the Supreme Court's holding in City of North Charleston.

In regard to your second question, you have asked whether a special tax district may be created based on unspecified services or an unspecified set of services. Article VIII, Section 7 of the South Carolina Constitution requires the General Assembly to "specify the precise condition under which such special levies shall be assessed." In section 4-9-30 of the South Carolina Code, the General Assembly limited counties "power to tax different areas at different rates" for purpose of making "appropriations for functions and operations of the county." This statute then enumerates operations of counties which presumptively qualify for creation of a special tax district, however the statute provides this list is not exclusive. *Id.*

In an opinion of this Office dated January 10, 1991, we addressed the question of whether a county may establish a special tax district for purposes of funding a rescue squad. In addressing this issue, this Office noted because operation a rescue squad was not listed as one of the enumerated purposes specifically authorized by section 4-9-30, a determination must be made to whether the operation of a rescue squad is a county purpose. Op. S.C. Atty. Gen., January 10, 1991. Presumably, this determination could not be made if the services to be rendered by the special tax district are not disclosed.

Furthermore, section 4-9-30 of the South Carolina Code provides for three procedures, which are discussed in detail below, by which a special tax district may be created. One of these procedures calls for the electors in the proposed special tax district to approve the creation of the special tax district, the nature of the services to be rendered, and maximum tax authorized to be imposed by election. S.C. Code Ann. § 4-9-30(5)(a)(i). Another procedure requires a certain percentage of the residents owning property in the proposed special tax district to submit a petition, which among other requirements, mandates the petition "contain a designation . . . of the nature of the services to be rendered . . ." S.C. Code Ann. § 4-9-30(5)(a)(ii). The remaining procedure requires the special tax district consist of the entire unincorporated area of the county. S.C. Code Ann. § 4-9-30(5)(a)(iii). As a special requirement for use of this procedure, the county must ascertain a special purpose district is not rendering the same service to be provided by the special tax district. *Id.* Accordingly, a county cannot comply with any of the three procedural requirements for creation of a special tax district if the services to be rendered are unknown.

### **Procedural Requirements**

In your third question, you request our opinion as to whether a county must hold a referendum if its council receives a petition in the proper form and with the requisite number of electors' signatures as provided in section 4-9-30(5)(a)(i) of the South Carolina Code. If so, your fourth question inquires as to whether the Council must create the special tax district if the results of the referendum favor the creation of the district.

Section 4-9-30(5)(a), as mentioned above, provides for three different procedures by which a special tax district may be created. The subsection to which you refer pertains to one of these procedures and provides:

When fifteen percent of the electors in a proposed special tax district sign and present to the county council a petition requesting the creation of a special tax district, an election must be held in which a majority of the electors in that area voting in the election shall approve the creation of the special tax district, the nature of the services to be rendered and the maximum level of taxes or user service charges, or both, authorized to be levied and collected. The petition must contain a description of the proposed special tax district, the elector's signature and address. If the county council finds that the petition has been signed by fifteen percent or more of the electors resident within the area of the proposed special tax district, it may certify that fact to the county election commission. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area of the proposed special tax district. The election ordered pursuant to this section is a special election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. The county election commission shall give at least thirty days' notice in a newspaper of general circulation within the proposed special tax district. The county election commission shall certify the result of the election to the county council and county council by written resolution shall publish the result of the election.

S.C. Code Ann. § 4-9-30(5)(a)(i) (emphasis added).

From the plain wording of the statute, it appears if the petition requirements are met, "an election must be held." However, in answering your final question, in our opinion, the County maintains discretion in creating the district despite a referendum result favoring the creation of a special tax district.

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Initially, the section 4-9-30(5)(a) does not contain any language requiring a county to create the district even if the referendum favors its creation. In addition, under the other procedures that may be employed to create a special tax district, the County "may pass an ordinance" establishing a special tax district if the procedural requirements are met. S.C. Code Ann. §§ 4-9-30(5)(a)(ii) & (iii) (emphasis added). However, regardless of how section 4-9-30(5)(a) may be interpreted, the South Carolina Supreme Court in Davis v. of Greenville, 313 S.C. 459, 463, 443 S.E.2d 383, 385 (1994), held pursuant to the South Carolina Constitution, a county has discretion on whether to create a special tax district. The Court made this determination based on its interpretation of the plain language of Article VIII, Section 7 of the South Carolina Constitution, which the court found "allows the County discretion to establish a special service district, but it does not mandate this action." Id. Thus, regardless of whether the electors approve the creation of the special tax district, the County has discretion as to whether to enact an ordinance creating the district.

### Conclusion

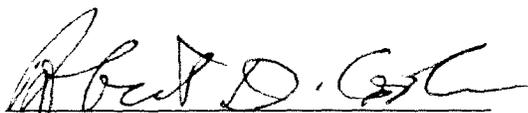
Based on our review of the applicable constitutional and statutory provisions, the creation of a special tax district to set taxes in the district at a reduced rate as compared to the County is not authorized by any constitutional or statutory provision, and in our opinion, would violate Article X, Section 6 of the South Carolina Constitution. Additionally, to create a special tax district, the services to be rendered must be specified for a county to determine whether those services constitute a county purpose or function and to comply with the procedural aspects of creating a special tax district. In regard to those procedural requirements, if a sufficient number of electors in the proposed special tax district submit a petition requesting the creation of a special tax district to the County, an election must be held allowing the electors in that area to vote on the approval of the creation of the special tax district. However, if the majority of the electors approve of the creation of the special tax district, the County retains discretion to enact an ordinance creating the special tax district.

Very truly yours,



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REVIEWED AND APPROVED BY:



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