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ATTORNEY GENERAL

March 1, 2010

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Dear Mr. Martin:

We understand from your letter that as the Oconee County Attorney, you would like to request an opinion of this Office on behalf of the Oconee County Council concerning “whether real property anticipated to be used for residential purposes can be placed into a joint county industrial and business park (a ‘Multi-County Business Park’) created pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina, as implemented by Section 4-1-170, et seq., Code of Laws of South Carolina, 1976, as amended (the ‘Joint County Industrial and Business Park Act’).” Specifically, you pose the following two questions to us:

- I. Can a Multi-County Business Park, created pursuant to Section 13 of Article VIII of the Constitution of the State of South Carolina and the Joint County Industrial and Business Park Act, contain residential property; and,
- II. If the answer to question I is “Yes”, does it matter if the end use for the residential property in question is to be owner-occupied (4%) or commercial (6%) residential property, so long as there is a business purpose to the development, construction, sales and/or lease of such property?

### **Law/Analysis**

Section 4-1-170 of the South Carolina Code (Supp. 2009) allows counties to enter into a written agreement to jointly develop an industrial or business park. This provision states as follows:

- (A) By written agreement, counties may develop jointly an industrial or business park with other counties within the geographical boundaries of one or more of the member counties as provided in Section 13 of Article VIII of the Constitution of this State. The

written agreement entered into by the participating counties must include provisions which:

- (1) address sharing expenses of the park;
- (2) specify by percentage the revenue to be allocated to each county;
- (3) specify the manner in which revenue must be distributed to each of the taxing entities within each of the participating counties.

(B) For the purpose of bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3), allocation of the assessed value of property within the park to the participating counties and to each of the taxing entities within the participating counties must be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties. Misallocations may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4-29-68(E).

(C) If the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality prior to the creation of the multi-county industrial park.

S.C. Code Ann. § 4-1-170. In addition, section 4-1-172 of the South Carolina Code (Supp. 2009) provides: “All multicounty parks must consist of contiguous counties.”

As you mentioned in your letter, neither section 4-1-170, nor any of the provisions pertaining to multicounty industrial and business parks, specifically state the type of property that may be included in such a park. Thus, we must employ the rules of statutory interpretation in order to determine whether such a park may include residential property. Our Supreme Court recently stated in SCANA Corp. v. South Carolina Dep’t of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009):

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

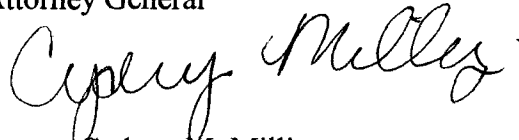
Mr. Martin  
Page 3  
March 1, 2010

construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

While section 4-7-170 does not specify what type of property can be included in a multicounty industrial or business park, the statute allows for the creation of an “industrial” or “business” park. According to Webster’s New World Dictionary, “industrial” means “having the nature of or characterized by industries . . . .” Webster’s New World Dictionary 718 (2<sup>nd</sup> ed. 1976). The plain and ordinary meaning of the term “business” is “a commercial or industrial establishment; store, factory, etc.” Id. at 192. Based on the plain and ordinary meaning of the terms industrial and business, one may argue that the Legislature did not intend for residential property to be included in an industrial or business park created pursuant to section 4-7-170. Nonetheless, because the type of property that may be included in a multicounty park is not specified in section 4-7-170, an argument can also be made that residential property is not prohibited from being included in a multicounty park. Accordingly, we believe the County should institute a declaratory judgement action in order for a court to decide with finality whether or not residential property may be included in a multicounty park.

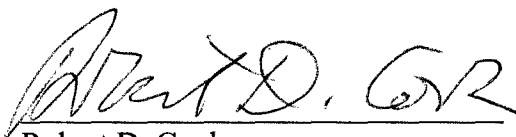
Very truly yours,

Henry McMaster  
Attorney General



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REVIEWED AND APPROVED BY:



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