



HENRY McMASTER
ATTORNEY GENERAL

March 17, 2010

Ray N. Stevens, Director
Department of Revenue
P. O. Box 125
Columbia, South Carolina 29214

Dear Mr. Stevens:

We received your letter requesting an opinion of this Office concerning Owner-Occupied Residential Property Located in a Multicounty Park. You asked if multicounty parks may include owner-occupied residential property, and if so, "whether such property may receive the [property tax] exemption contained in Code Section 12-37-220(B)(47)." Additionally, you asked how reimbursements paid to school districts and deposited in the Homestead Exemption Fund are to be distributed. As noted in your request, on March 14, 1990, this Office issued an opinion addressing the manufacturing exemption contained in Code Section 12-37-220(A)(7) for property located in a multicounty park. Additionally, on March 1, 2010, this Office issued an opinion specifically addressing your question regarding residential property. The March 1, 2010 opinion is enclosed for your convenience.

Law/Analysis

Article VIII, Section 13(D) of the South Carolina Constitution provides that counties have the authority to develop industrial or business parks with other counties, and that such multicounty parks are "exempt from all ad valorem taxation." However, the "owners and lessees of any property situated in the park shall pay an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable except for the exemption herein provided."

S.C. Code Ann. § 4-1-170 also provides that participating counties, "by written agreement . . . may develop jointly an industrial or business park with other counties within the geographical boundaries." The written agreement should explain 1) how expenses will be shared, 2) the percentage of revenue allocated to each county, and 3) the manner in which revenue must be distributed

In an opinion of this Office dated March 14, 1990, we stated as follows:

[M]unicipalities only have such powers as are granted them by the state in their characters or by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E. 586 (1950). These powers may be expressly granted or may be fairly implied from or necessarily incidental to those powers expressly granted. Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720 (1948).

In an opinion of this Office dated March 1, 2010, we stated as follows:

S.C. Code Ann. § 4-1-170 does not 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) . . . The Court should give words their plain and ordinary meaning . . . Sloan v. S.C. Bd. Of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). . . .

According to Webster's New World Dictionary, "industrial" means "having the nature of or characterized by industries. . . ." Webster's New World Dictionary 718 (2nd ed. 1976). The plain and ordinary meaning of the term "business" is "a commercial or industrial establishment; store, factory, etc." Id. at 192.

Conclusion

Since S.C. Code Ann. § 4-1-170 does not specifically address what type of property can be included in a multicounty industrial or business park, one must look to the plain and ordinary meaning. Based on the plain and ordinary meaning of the terms industrial and business, as described above, it does not appear that the Legislature intended for residential property to be included in an industrial or business park created pursuant to § 4-1-170. Nevertheless, consistent with our prior opinion, we believe the County should institute a declaratory judgment action in order for a court to decide with finality whether or not residential property may be included in a multicounty park.

Mr. Stevens
Page 3
March 17, 2010

Unless the court determines that residential property may be included in a multicounty park, it is unnecessary to address the tax exemption and Homestead Exemption Fund distribution questions.

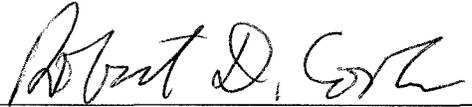
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General