



HENRY McMASTER
ATTORNEY GENERAL

April 22, 2010

The Honorable Tom Young
SC House of Representatives, District 81
PO Box 651
Aiken, SC 29802

Dear Representative Young:

We received your letter requesting an opinion of this Office concerning Aiken County's Local Option Sales Tax Referendum. You asked whether "the local government can include infrastructure improvements to the Cumbee Center, a center for domestically abused women, on the next ballot." Specifically, you asked "whether the Cumbee Center complies with the projects detailed in Title 4, Chapter 10, Article 3" of the South Carolina Code of Laws. This opinion will address prior opinions, relevant statutes, and legislative intent.

Law/Analysis

Title 4, Chapter 10 of the South Carolina Code of Laws of 1976 governs Local Sales and Use Tax. Specifically, S.C. Code § 4-10-330 governs the contents of ballot questions and the purpose for which proceeds of tax may be used. S.C. Code § 4-10-330(A)(1) states as follows:

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), 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 and 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, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the

direction of an area commission for technical education, **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) beach access and beach renourishment;

(g) 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 (f) of this item;

(h) **any combination of the projects** described in subitems (a) through (g) of this item;

S.C. Code § 4-10-330(A)(1) (emphasis added).

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). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949).

While "battered women's shelter," "abused women's center," or something of the like is not specifically mentioned in the statute, many types of community and medical facilities are listed. It would make common sense to conclude that a battered women's center is a combination of these facilities.

The statute uses the language "or any combination of these facilities" throughout the code section, indicating that the legislative intent is not to limit the projects to the ones specifically mentioned. In an opinion of this Office dated June 25, 2008, we stated as follows:

This provision does not appear to limit a county's ability to appropriate funds to other entities providing water service. . . . In addition, section 4-10-330(A)(1)(g) appears to contemplate projects that are not solely under the counties authority, but are operated jointly by "the county, a municipality, special purpose district, or school district, or any combination of those entities . . ." (emphasis added).

The June 25, 2008 opinion does not specifically address our issue of a center for domestically abused women; however, the opinion highlights the fact that S.C. Code § 4-10-330(A)(1) should be read in a flexible manner.

An opinion of this Office dated August 17, 1988 came to a similar conclusion regarding the flexibility of S.C. Code § 4-10-330(A)(1); we stated as follows:

[F]ocus must be paid to the word “include.” Ordinarily, the word “include” is a word of enlargement and not of limitation. Baker v. Chavis, 306 S.C. 203, 410 S.E.2d 600 (Ct. App. 1991). The word “include” is not a word of all embracing definition but an illustrative application of general terms. Id. When the word “include” is used in connection with a number of specified objects it implies that there may be others which are not mentioned. St. Louis County v. State Highway Commission, 409 S.W.2d 149 (Mo. 1966). The word “include” conveys the conclusion that there are other items includable, though not specifically enumerated. Zorba Contractors, Inc. v. Housing Authority of the City of Newark, 660 A.2d 550 (N.J.Super.Ct.App.Div. 1995).

In keeping with the aforementioned rules of statutory construction, the statute’s use of the words “may include” suggests that the legislature did not intend to limit the permissible projects to only those listed. Baker v. Chavis, supra. The use of the words “may include” indicates that the listed projects are to be viewed as illustrative of the types of permissible projects.

The language “may include the following” indicates that a flexible standard should be used when reading the statute. Op. S.C. Atty. Gen., August 17, 1988.¹

According to their website, the Cumbee Center to Assist Abused Persons is a “non-profit agency, which provides services for abused women, their children, teens and men.” The Cumbee Center provides “free and confidential 24-hour emergency services to victims of domestic violence and sexual assault. In addition, the agency offers crisis and long term counseling, temporary emergency shelter, legal advocacy, referrals to social service agencies, support groups, emotional support, and community outreach programs. The Cumbee Center also offers educational presentations on domestic violence and sexual assault to schools, community and professional groups, and businesses.” Their mission is to “help abused women and their children break the cycle of violence in their lives.”²

A number of services are provided for women and children in crisis or emergency situations; the services range from emergency services to counseling to educational programs. S.C. Code § 4-10-330(A)(1) specifically lists “hospitals, emergency medical facilities, . . . educational facilities³ . . . jointly operated projects of the county, a municipality, special purpose district, and school district,

¹ See also, Hamilton v. U.S. Department of Education and North Carolina State Education Assistance Authority, 361 B.R. 532 (2007) (this approach gives the courts the appropriate flexibility to do justice in each unique case).

² <http://www.cumbeecenter.org>

³ The statute fully reads “educational facilities under the direction of an area commission for technical education[.]” S.C. Code § 4-10-330(A)(1)(b).

The Honorable Tom Young
Page 4
April 22, 2010

or . . . any combination of the projects described.” The Cumbee Center appears to be a combination of the projects described in the subsections of S.C. Code § 4-10-330(A)(1).

The Kansas Attorney General’s Opinion dated May 29, 1991, explains that a health care facility is defined as “any clinic, long-term care facility, home for the aged, outpatient services, in-home health services, child-care services, respite care services, adult day care services, dietary services, alcohol and drug abuse services and emergency medical or ambulance services.” Kan. Atty. Gen. Op. No. 91-60, 1991 WL 576834. While South Carolina is in no way controlled by a Kansas Statute, the definition reinforces that flexible definitions of the items listed in S.C. Code § 4-10-330(A)(1) are appropriate.

Conclusion

It is the opinion of this Office that a court would likely find that the Cumbee Center falls within the projects listed in S.C. Code § 4-10-330(A)(1). The General Assembly used language such as “may include the following” and “any combination of these facilities . . . projects . . . [or] entities,” indicating that a flexible interpretation of the statute is appropriate. One could logically conclude that a center for domestically abused women is a combination of a hospital, emergency medical facility, educational facility and county project.⁴ Therefore, Aiken County may include infrastructure improvements to the Cumbee Center on the next ballot for the Local Option Sales Tax Referendum.

Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

⁴ According to their website, the Cumbee Center is a proud member of United Way of Aiken County. See, <http://www.cumbeecenter.org>.