ALAN WILSON
ATTORNEY GENERAL

October 31, 2012

Bradley T. Farrar, Esquire
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Office of the County Attorney
P. O. Box 192
Columbia, South Carolina 29202

Dear Mr. Farrar:

Attorney General Alan Wilson has referred your letter of October 4, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Would the sharing of data listed in South Carolina Code of Laws § 6-1-120(A) (1976, as amended) ("financial information, or other information indicative of units of goods or services sold, provided by a taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality.") obtained by municipalities with a county violate § 6-1-120 (.it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the financial information, or other information indicative of units of goods or services sold.)? In simpler terms, does the exception listed in § 6-1-120 (B)(3) ("sharing of data between public officials or employees in the performance of their duties") include a municipality sharing information with a county or does it only refer to public officials or public employees within the same municipality?

Short Answer: As long as it is within the performance of their duties, there appears to be no limitation on sharing between public officials and public employees within separate offices under South Carolina Code of Laws § 6-1-120 (1976, as amended).

Law/Analysis: This Office has previously opined the sharing of data between government agencies for official purposes would generally be permitted. See Ops. S.C. Atty. Gen., 2004 WL 3058229 (December 16, 2004). However, as a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942). Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). The construction of a statute by

an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons. Emerson Elec. Co. v. Wasson, 287 S.C. 394, 397, 339 S.E.2d 118, 120 (1986).

The first place to look in regards to interpreting the statute is to the legislative intent. There is no legislative history included that directly answered the question presented to enlighten us on the intent of the legislature at the time this statute was passed. South Carolina Code of Laws § 6-1-120 was passed in 1999 but was later amended in 2000 to add (B)(3) which is the relevant portion of the statute to your question.

Next we may look to the statute itself, but find that neither "public official" nor "employees" are defined in that particular statute. In order to ascertain the meaning of those terms, the next place to look is the reasonable definition intended by the legislature. We do this by looking at the plain meaning of the words, rather than analyzing statutes within the same subject matter since the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). It is more likely than not a court would find the rule *in pari materia* of statutory construction does not apply here because the meaning of the statute appears to be clear and unambiguous. Rabon v. SC St. Highway Dept., 258 S.C. 154, 187 S.E.2d 652 (1972). The plain meaning of a "public official" or "employee" would undoubtedly include municipal and county employees and officials.

One other issue to examine is whether the sharing intended by the legislature was between public officials or employees in the same agency or within different agencies. Again, the clear and plain meaning of the statute allow sharing within different agencies, since the statute is not limited by any such language. There appears to be no limiting language in the statute on either the definitions of public officials and public employees or on which agencies could share information, therefore this Office does not interpret any such limitation where the legislature expressly chose not to limit the terms. See State v. Prince, 335 S.C. 466, 517 S.E.2d 229 (1999) and Ops. S.C. Atty. Gen., 2006 WL 2593071 (August 10, 2006); 2002 WL 31341818 (August 16, 2002); 1994 WL 377820 (June 6, 1994); 1993 WL 720143 (June 28, 1993); 1991 WL 632999 (June 21, 1991); 1990 WL 482435 (August 17, 1990); 1988 WL 485345 (December 1, 1988); 1985 WL 166049 (August 6, 1985).

However, if the meaning of § 6-1-120(B)(3) is found to be unclear, the same conclusion could be drawn analyzing statutes dealing with the same or similar subject matter (*in pari materia*). Sloan, 370 S.C. 452, 636 S.E.2d 598 (2006). The definition of "public official or employee" in other statutes in force at the time of this statute's passing would include a broad spectrum of people. S.C. Code § 2-17-10(17), which is a definition within a lobbying statute, defines a public employee as "any person employed by the State." Within that same section public official is defined as "any elected or appointed official of the State, including candidates for any such state office. § 2-17-10(18). However, 'public official' does not mean a member of the judiciary." Id. Elsewhere in the code, public officers are generally defined as "all officers of the State that have hereto been commissioned and trustees for the various colleges of the State, members of various State boards and other persons whose duties are defined by law." § 8-1-10 (1976). Under the State's ethic laws, a public employee is defined as "a person employed by the State, a county, a municipality, or a political subdivision," and a public official is "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office..." § 8-13-100 (25)-(27) (Supp. 2011). All of these definitions would be consistent with including municipal and county officials and employees as public officials and employees.

As an aside, in regards to what constitutes the performance of the duties of public officials and public employees, if they are not specifically outlined, you may want to consider the definition of activities that arise out of official capacity as defined in the State's ethics laws found in S.C. Code § 8-13-100 (30).

Conclusion: Based on the clear and unambiguous language of the statute as well as the opinions and cases cited above, this Office believes a court would likely interpret the statute as allowing the sharing of information between public officials and public employees in their official duties. However, this Office is only issuing a legal opinion. Until a court specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,

Anita S. Fair

Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Deputy Attorney General