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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 17, 1998

R. Carlisle Roddey
County Supervisor
Chester County
P.O. Box 580
Chester, South Carolina 29706

RE: Informal Opinion

Dear Mr. Roddey:

Your opinion request has been forwarded to me for reply. You have requested an opinion of this Office regarding the proper statutory interpretation of the Capital Project Sales Tax Act. S.C. Code Ann. § 4-10-300 et. seq. You have informed this Office that Chester County desires to use the proceeds of such a tax to close a county landfill. You note that Section 4-10-330 of the Code lists several projects for which the tax may be used, but landfill is not included among the projects listed. You have asked, since landfill is not listed, may the proceeds of the tax be used for such a purpose.

Section 4-10-310 of the Code provides in pertinent part:

Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

Section 4-10-330 of the Code provides in pertinent part:

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing a ballot question

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formulated by the commission pursuant to subsection 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, and bridges;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, 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) 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 (e) of this subsection;
- (g) any combination of the projects described in subitems (a) through (f) of this item; (emphasis added).

To answer your question, focus 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).

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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. Had the General Assembly intended otherwise, there would have been no need to insert these words.¹ See Op. Atty. Gen. dated February 27, 1989. Therefore, inasmuch as a court has not ruled to the contrary, it is my opinion that the fact landfill is not one of the projects listed in the statute, does not inevitably lead to the conclusion that it would not be permissible to use the proceeds of the tax for such a purpose. In fact, it would appear that the closing of a landfill would be among the class of projects generally contemplated by the statute.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

¹ In view of the statute's ambiguity, it may be wise for the General Assembly to revisit this issue when they return in January. Until such time, however, I am of the view that use of the words "may include" is controlling.