



ALAN WILSON
ATTORNEY GENERAL

April 29, 2014

The Honorable Kristopher R. Crawford
Member, House of Representatives
327-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Crawford:

This Office received your request for an opinion regarding whether or not a portion of monies collected from a sales tax pursuant to section 4-10-10 *et seq.* by the City of Florence can be used to support a facility for teaching third and fourth year medical students. Our understanding of the facts is that on March 22, 1993, the Florence City Council passed a resolution requesting that Florence County have a referendum concerning a one-cent sales and use tax “being levied in the county for the purpose of rolling back county and municipal real ordinary property taxes and for the purpose of funding county and municipal operations.” Florence Resolution No. 93-10. After Florence County scheduled the referendum, the Florence City Council passed a resolution¹ on September 27, 1993 stating that “upon the approval of the local option sales tax referendum on November 2, 1993, by the voters of Florence County, all of the revenues generated therefrom by the City of Florence will be utilized to reduce City property tax revenues, by application of 100% of the local option sales tax proceeds to a tax credit against City ad valorem property taxes. . . .” Florence Resolution No. 93-29.

The County held the referendum on November 2, 1993 and the citizens of Florence County were asked “Shall a one percent sales and use tax be levied in Florence County for the purpose of allowing a credit against a taxpayer’s county and municipal ad valorem property tax liability and for the purpose of funding county and municipal operations in the Florence County Area?” The sales tax was approved in the referendum.

After the referendum, the City of Florence enacted an ordinance that stated “[t]hat all revenues generated from the local option sales tax by the City of Florence shall be utilized to reduce City property tax revenues, by application of 100% of the local option sales tax proceeds to a tax credit against City ad valorem property taxes.” Florence Code of Ordinances § 94-03. An amended ordinance was enacted on July 8, 2013 and it provided that the City of Florence would use three million dollars of revenue from the

¹ “Resolutions do not normally have mandatory or binding effect. Rather, the passage of resolutions is generally considered to be merely directory.” Glasscock Co., Inc. v. Sumter County, 361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004). A resolution is defined as “[a] formal expression of the opinion or will of an official body or a public assembly, adopted by vote. . . .The chief distinction between a ‘resolution’ and a ‘law’ is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have temporary effect on such particular thing, while by a ‘law’ it is intended to permanently direct and control matters applying to persons or things in general.” Black’s Law Dictionary (6th ed. 1990).

local option sales tax “for the sole purpose of providing City incentive funding to encourage and facilitate the location of a third and fourth year medical school facility in the area of downtown Florence, said project to be accomplished in cooperation with Francis Marion University.” Florence Code of Ordinances § 2013-17. Another three million dollars of revenue would be used “for neighborhood redevelopment through projects and activities approved by the City for the purpose of encouraging and supporting redevelopment of struggling or blighted neighborhoods within the City.” Id.

Please be aware that determining what qualifies as a proper use of a sales tax is a factual matter which is beyond the scope of an opinion. See Op. S.C. Atty. Gen., December 12, 1983. Only a court could restrict the City of Florence’s support of the medical school facility. However, this Office can assist you by providing you with the law regarding such matters.

LAW/ANALYSIS:

The applicable law appears to be section 4-10-10 *et seq.* of the South Carolina Code, regarding a local option sales tax. “A county, upon referendum approval, may levy a sales and use tax of one percent on the gross proceeds of sales within the county area. . . .” S.C. Code Ann. Sec. 4-10-20 (1976 Code, as amended). Pursuant to the Code, “[t]he sales and use tax must not be imposed in the county area, unless a majority of the qualified electors voting in the referendum approve the question.” S.C. Code Ann. Sec. 4-10-30 (1976 Code, as amended). In the referendum for a local option sales tax, the ballot question must be:

Must a one percent sales and use tax be levied in _____ County for the purpose of allowing a credit against a taxpayer’s county and municipal ad valorem tax liability and for the purpose of funding county and municipal ad valorem tax liability and for the purpose of funding county and municipal operations in the _____ County area?

Id.

A review of the Florence County ballot question that you sent us shows that it contained the language required of a proposed local option sales tax pursuant to section 4-10-30. Looking at the plain language of the ballot,² a majority of the Florence County electorate approved the sales tax being used both as a

² American Jurisprudence states the following:

The basic rules of statutory construction apply with equal force to legislation by the people through the initiative process or by referendum. Thus, in interpreting a voter initiative, courts turn first to the statutory language, giving the words their ordinary meaning, and if the statutory language is not ambiguous, then the plain meaning of the language governs. To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time. Absent ambiguity, a court may presume that voters intend the meaning apparent upon the face of an initiative measure, and the court may not add to the statute or rewrite it to conform to

credit against county and municipal property taxes and for the purpose of funding county and municipal operations in the Florence County area.³

The revenue obtained from the local option sales tax is deposited into two separate funds: the Property Tax Credit Fund and the County/Municipal Revenue Fund. See S.C. Code Ann. Sec. 4-10-90 (1976 Code, as amended). The tax revenue is divided as follows:

(1) During the first year after the effective date of this act, sixty-three percent to the Property Tax Credit Fund and thirty-five percent to the County/Municipal Revenue Fund.

(2) During the second year after the effective date of this act, sixty-five percent to the Property Tax Credit Fund and thirty-five percent to the County/Municipal Revenue Fund.

(3) During the third year after the effective date of this act, sixty-seven percent to the Property Tax Credit Fund and thirty-three percent to the County/Municipal Revenue Fund.

(4) During the fourth year after the effective date of this act, sixty-nine percent to the Property Tax Credit Fund and thirty-one percent to the County/Municipal Revenue Fund.

(5) During the fifth year after the effective date of this act, and each year thereafter, seventy-one percent to the Property Tax Credit Fund and twenty-nine percent to the County/Municipal Revenue Fund...The State Treasurer shall distribute monthly the revenues according to the provisions of this chapter.

Id.

The Property Tax Credit Fund “must be used to provide a credit against the property tax liability of taxpayers in the county and municipality. . . .” S.C. Code Ann. Sec. 4-10-40 (1976 Code, as amended). The Property Tax Credit Fund must be distributed to the county and the municipalities in the county as follows:

- (1) sixty-seven percent to the county;

an assumed intent that is not apparent in its language. Thus, the intent behind the language of a voter's initiative only becomes relevant if the language is ambiguous.

42 Am. Jur. 2d Initiative and Referendum § 49 (2014).

³ Florence County did enact an ordinance which stated that if the local option sales tax were approved by the voters, then one hundred percent of revenues would be used for property tax credits and the ordinance could not be amended or repealed unless approved in a referendum. See Florence County Code of Ordinances 13 – 93/94. However, the City of Florence did not provide that a referendum was required to amend or repeal its ordinance.

- (2) thirty-three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.

S.C. Code Ann. Sec. 4-10-40 (1976 Code, as amended).

The Code provides the following concerning the County/Municipal Revenue Fund:

(A) The revenue generated in a county area and set aside and allocated to the County/Municipal Revenue Fund must be distributed to the county and the municipalities in the county area as follows:

- (1) fifty percent based upon the location of the sale;
- (2) fifty percent based on population.

(B) The population of the county is the population of the county area, and the population of the municipalities is the population within the corporate boundaries of the municipalities in the county area.

(C) Revenue distributed to a county or municipality under this section may be used to provide an additional property tax credit in the manner provided in 4-10-40(B).

S.C. Code Ann. Sec. 4-10-50 (1976 Code, as amended).

The revenues from the local option sales tax distributed to the City of Florence are divided between the Property Tax Credit Fund and the County/Municipal Revenue Fund. According to the July 8, 2013 ordinance, “the entirety of the Property Tax Credit Fund and fifty (50%) percent of the County/Municipality Revenue Fund. . . shall continue to be utilized as a tax credit against City ad valorem property taxes. Florence Code of Ordinances § 2013-17. The remaining fifty (50%) percent of the County/Municipality Revenue Fund shall be utilized to raise the three million dollars committed by the City to acquire property for a third and fourth year medical school facility in downtown Florence and the three million dollars committed to redevelop neighborhoods that are struggling or blighted. Id.

As required by law, the City of Florence is using the distributions from the Property Tax Credit Fund as a tax credit against city property taxes. The issue is whether tax revenue from the County/Municipal Revenue Fund can be used to support a facility for teaching third and fourth year medical students. Pursuant to the Code, the City of Florence may use the distributions from the County/Municipal Revenue Fund to provide an additional property tax credit. However, the City of Florence is not prohibited from using the funds in a different manner. The South Carolina Department of Revenue has observed that “[t]he money in the County/Municipal Revenue Fund may be used for any legitimate government purpose including allowing an additional property tax credit to taxpayers.” S.C. Revenue Advisory Bulletin No. 2001 – 6, 2001 WL 1922677 (June 25, 2001).

Furthermore, contributions of public funds by one political subdivision to assist another have been authorized. We have previously opined:

A number of other decisions of our Supreme Court have also upheld contributions of funds by a county to another governmental entity to assist in a public venture. Cothran v. Mallory, 211 S.C. 387, 45 S.E.2d 599 (Spartanburg County and City of Spartanburg jointly built auditorium); Shelor v. Pace, 151 S.C. 99, 148 S.E. 726 (Oconee County issued bonds for school purposes); Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (Jasper County issued bonds for school district); Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (Dillon County issued bonds for school district); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (Florence County donated \$1,000,000 to Pee Dee Regional Health Service District to build hospital). And in a previous opinion, this Office concluded that the issuance of bonds in the amount of \$200,000 by Richland County in order to make a contribution for the construction of the Carolina Coliseum even though ‘title to the Coliseum will be in the University and control, thereof will be by the University’ 1967 Op. Atty. Gen., Op. No. 2225, p. 23, 24.

It is true that the majority of the foregoing decisions were rendered prior to the adoption of new Article X of our Constitution and before the enactment of the Home Rule Act. See, § 4–9–10 et seq. However, it would appear that these prior decisions are consistent with the aforesaid newly adopted provisions of law. Article X, § 14(4) provides in pertinent part:

- (4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision. (emphasis added).

Op. S.C. Atty. Gen., Op. No. 85-5, January 21, 1985 (1985 WL 165976).

Revenue from taxes is to be used for a “public purpose” in South Carolina. “It is well recognized that ‘public funds must be expended only for a public purpose.’” Op. S.C. Atty. Gen., May 8, 2013 (2013 WL 2121456) (citing Op. S.C. Atty. Gen., January 15, 1999). “[T]here are no restrictions imposed by the Constitution upon the purposes for which the Legislature may levy taxes and expend public funds, except that it be a public purpose.” Op. S.C. Atty. Gen., May 8, 2013 (2013 WL 2121456) (citing Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969)). “In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision.... It is a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of the changing needs of society.” WDW Properties v. City of Sumter, 342 S.C. 6, 13, 535 S.E.2d 631, 634 (2000).

In Nichols v. S.C. Research Authority, 290 S.C. 415, 429, 351 S.E.2d 155, 163 (1986), the Court developed a four part test to determine whether the ‘public purpose’ requirement has been met:

The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

The Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) further held that “[l]egislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit at the result of the enactment.”

As stated above, whether or not tax revenue is being used by the City of Florence for a public purpose is a factual determination that must be made by a court. Additionally, we have not been provided with any of the specifics of the medical facility. However, “our courts recognize economic development as a legitimate public purpose.” Op. S.C. Atty. Gen., October 28, 2008 (2008 WL 4829833) (quoting Ed. Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dep't of Revenue, 356 S.C. 120, 588 S.E.2d 97 (2003) and Nichols v. South Carolina Research Auth., 290 S.C. 415, 351 S.E.2d 155 (1986)). A court may find that using tax revenue from the County/Municipal Revenue Fund to support a facility for teaching third and fourth year medical students is a legitimate public purpose because it promotes economic development in the Florence downtown area by attracting significant numbers of students, faculty and staff and revitalizing it.

We must now determine whether the use of the tax revenue for the medical school facility meets the “corporate purpose” of the City of Florence. “[A] corporate purpose must be some purpose germane to the general scope of the objects for which the corporation is created. . . .” Allen v. Adams, 66 S.C. 344, 44 S.E. 938 (1903). We opined in a prior opinion:

Taxation or expenditure of public funds for a corporate purpose has been explained in County of Livingston v. Darlington, 101 U.S. 407, 25 L.Ed. 1015 (1880):

... a tax for a corporate purpose is a “Tax to be expended in a manner which shall promote the general prosperity and welfare of the community which levies it; that every individual tax payer shall have a direct interest in the object for which the tax is levied, or be directly benefited by the expenditure, is unattainable in the very nature of things. General results are all that can be expected...”

Id., 25 L.Ed. at 1018. Discussing whether a particular expenditure in another situation was for a corporate purpose, the Court continued:

If it was for a public purpose, for the benefit of the inhabitants of the municipality, then it would be for a corporate purpose. The latter cannot be distinguished from the former; and all that we have said in relation to

the public purpose of the tax will apply with equal force
to a corporate purpose. . . .

Id.

Op. S.C. Atty. Gen., No. 91-49, August 7, 1991 (1991 WL 474779).

Pursuant to Darlington, if a Court finds that the use of tax revenue for a medical school facility is for a public purpose, i.e. for the general benefit of the citizens of the city, then it would most likely find that the City of Florence is fulfilling its corporate purpose.

Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 631 (1947) appears to support the conclusion that the acquisition of land for the medical school facility is a public purpose and that the City of Florence is fulfilling its corporate purpose. In Smith, a taxpayer challenged the issuance of bonds by Charleston County, which were to be payable from a direct ad valorem tax upon all taxable property in the county, to acquire land for a teaching hospital for the Medical College of South Carolina. The Court held:

Certainly the fundamental basis of the petitioner's attack is his contention that because of State ownership and control the taxpayers and people of Charleston County have no such interest as will warrant the levy of taxes or the issuance of bonds in order to provide a site for the hospital. Yet it must be obvious that the benefits to be derived by the people of Charleston County from the establishment of a \$4,000,000 hospital of about 325-bed capacity, as a teaching or clinical hospital in connection with the Medical College, are incalculable, when considered from the viewpoint of the public health and welfare.

It is indeed true that the citizens of other counties of the State would have an equal right to obtain the services of the hospital, but in the very nature of things a decidedly large percentage of the patients who would be treated there would be persons residing in Charleston County. It may also be observed that the location of such a hospital in the county will undoubtedly be of some special and peculiar benefit to its residents, because of the fact that they will have quicker and cheaper access to it than will the people of any other part of the State.

Our State Supreme Court in Smith determined that it was irrelevant that the County was levying taxes or issuing bonds in order to provide a site for the hospital of a State institution. Quoting from that case, the Court stated:

We find nothing whatsoever in our Constitution which provides that the Legislature shall have no power to authorize a county to levy a tax or issue bonds for any purpose unless the county is the sole beneficiary thereof, to the exclusion of the State or any other body politic and corporate.

Id.

Additionally, the Court in *Smith* “pointed out the obvious advantage to joint cooperative ventures among various governmental units.” Op. S.C. Atty. Gen., Op. No. 85-5, January 21, 1985, supra. The Court held:

It cannot be doubted that the State has power to construct the hospital, and that the County of Charleston also has the power to construct it. How can it then be logically said that the State and the County do not have the power to construct it as a joint project? For we have nothing in our Constitution which prohibits cooperation between two governmental entities, created under it, in doing what each of them might do alone.

Id. The Court quoted 38 Am.Jur. 251, 252:

[T]here is nothing unconstitutional in a statute which permits a municipality, as an inducement to the state to locate such an institution within its corporate limits, to make a donation or subscription in money, bonds, or lands, to aid in the establishment and construction of the institution in the desired place.

Id.

Smith is analogous to the case at hand because the Court found a public purpose and a corporate purpose when a political subdivision provided public money for the acquisition of a site to construct a facility for a State school and it entailed two governmental units working together.

CONCLUSION

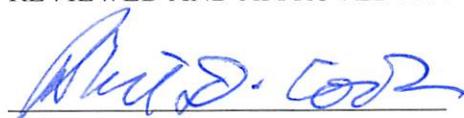
While the question you raised is not free from doubt, we believe that a court would find that because the proposed medical school facility serves a public purpose and the city’s corporate purpose, the City of Florence could use tax revenue from the County/Municipal Revenue Fund of the local option sales tax to fund such a project.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General