



ALAN WILSON
ATTORNEY GENERAL

August 1, 2016

Mr. Arrigo P. Carotti, Esq.
Horry County Attorney
1301 Second Avenue
Conway, South Carolina 29526

Dear Mr. Carotti,

Attorney General Alan Wilson has referred your letter dated March 10, 2016 to the Opinions section regarding the propriety of the Budget Savings Suggestion Program ("the Program").¹ Your letter asks, "Specifically, does such Program comport with existing law, including without limitation Article III, Section 30 and Article X, Section 11 of the State Constitution, and Sections 4-11-170, 4-9-630, 8-13-700(A), and 8-15-10 of the Code of Laws of South Carolina?"

The terms of the Program attached to your letter are as follows:

PURPOSE: To establish guidelines for employees to submit suggestions that result in annual budgetary savings for the County.

ELIGIBILITY: Any County employee can submit a suggestion that results in annual budget savings.

EMPLOYEE INCENTIVE: Employees who suggest an idea that results in annual budgetary savings will be eligible to receive a bonus equal to 25% of the amount of annual budgetary savings, up to \$50,000. The bonus award shall be paid when the suggestion has gone into effect and savings can be confirmed. The bonus paid will be a one-time payment and will not increase the employee's base pay. Should a team of employees submit a suggestion, the bonus shall be paid in equally to each team member.

SUPERVISER INCENTIVE: The immediate supervisor of an employee that has submitted an idea that results in budgetary savings will be eligible for a one-time bonus equal to 10% of the savings, up to \$25,000. This bonus shall be paid when the suggestion

¹ We note that the prudence of any such policy decision is a matter beyond the scope of an opinion of this Office. *Ops. S.C. Atty. Gen.*, 2014 WL 1398581, *3 n.3 (January 23, 2014); 2013 WL 6699948 (Dec. 10, 2013) (stating this Office generally defers to a county governing body's determination as to how it should handle discretionary matters and will not attempt to micromanage the county's affairs); 2011 WL 2214062 (May 11, 2011) ("When rendering opinions, this Office may not give a view regarding policy decisions"); 1992 WL 575683 (June 26, 1992) (stating this Office only addresses legal questions and will make no comment "as to policy matters or as to the wisdom of the undertaking").

has gone into effect and savings can be confirmed. Elected or appointed officials, and department heads, are not eligible for the supervisor incentive.

SUGGESTION CRITERIA:

- State where savings may be obtained in the county explaining the problem... with the current practice and how it should be changed.
- Provide a description on how to implement the savings including any new training, equipment, or other costs needed to achieve the savings.
- Must be in line with the overall mission of the County.

The following are restrictions on the Budgetary Suggestion Program:

- Will not be used as a complaint system.
- Must not benefit the submitter in a personal way.
- Anonymous ideas will not be accepted.
- Savings must be recurring year after year.

SUBMISSION REQUIREMENTS: Any employee can submit a suggestion at any time to the Budgetary Savings Committee.

SELECTION PROCESS: A five-member Budgetary Savings Committee shall be appointed by the County Council to review the suggestions. The Committee shall consist of employees and County Council member(s). With a minimum of three being council members. The Committee review the suggestion to determine if it is feasible and will make a final recommendation to County Administrator and the Administration Committee. The Administration Committee to approve with suggestions being submitted to County Council. Should the suggestion be approved, the employee shall be eligible for the bonus once savings have been confirmed and have gone into effect. Implementation of cost savings and bonus awards for departments supervised by an Elected or Appointed Official shall only be done with the approval of the Elected and Appointed Official affected by the suggestion.

COUNTY COUNCIL REPORT: A report to the County Council shall be provided by the Budgetary Savings Committee prior to the spring budget retreat. This report shall include the suggestions accepted by the Administration Committee, the budgetary savings achieved, and the amount of the bonuses provided. The County Council shall take a vote on implementing the recommendation on whether to implement the suggestions before finalizing the budget. Employees who have submitted approved suggestions that have resulted in savings shall be recognized by County Council at the next regular meeting of Council.

Short Answer

Based on the analysis below, we believe a court would find that portions of the Program, as currently written, violate the Constitution of South Carolina and the South Carolina Code of Laws. The

Program's employee incentive award is vulnerable to challenges as an "extra allowance" because there is no limitation on employees who could have implemented the suggestion in the course of their normal job duties. S.C. Code Ann. § 4-11-170 (1976 Code, as amended). However, such a challenge could be prevented by including an eligibility requirement prohibiting awards to those suggestions which could not be implemented by the employee through their normal job duties. Further, it is this Office's opinion that the supervisor incentive award, as currently written, likely violates the State Constitution and the South Carolina Code of Laws as extra compensation or allowance because there is no requirement that such an award recipient render service. S.C. Const. Art. III, § 30; S.C. Code Ann. § 4-11-170 (1976 Code, as amended).

Law/Analysis

As noted in our prior opinions, local government autonomy has increased significantly since the passage of the Home Rule Act. Ops. S.C. Atty. Gen., 2013 WL 861300 (February 22, 2013); 2011 WL 1740752 (April 7, 2011); 2005 WL 1983356 (August 8, 2005). The State Constitution requires the General Assembly to "provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties..." S.C. Const. Art. VIII, § 7. Accordingly, the General Assembly passed the Home Rule Act, S.C. Code Ann. §§ 4-9-20 *et seq.*, which provides the governing bodies of each county with enumerated powers while remaining subject to the general laws of the State. S.C. Code Ann. § 4-9-30 (1976 Code, as amended). The Supreme Court of South Carolina has held that "article VIII, section 17 of the South Carolina Constitution and S.C. Code Ann. § 4-9-25 require this Court to liberally construe the county's authority" so long as the County action is not prohibited by the State Constitution or statute. Eargle v. Horry County, 335 S.C. 425, 432, 517 S.E.2d 3, 7 (1999); Op. S.C. Atty. Gen., 2013 WL 861300 (February 22, 2013); accord Williams v. Town of Hilton Head, 311 S.C. 417, 429, 429 S.E.2d 802, 805 (1993) (The Home Rule Act "obviate[d] the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state.").

Therefore, we will provide this Office's opinion on whether the Program complies with the provisions of the South Carolina Constitution and the South Carolina Code of Laws specified in your letter, as well as other relevant law.² Please note that "while this Office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with a state statute. Thus, ... an ordinance may continue to be enforced unless and until set aside by a court of competent jurisdiction." Ops. S.C. Atty. Gen., 2013 WL 861300, at *3 n.1 (February 22, 2013); 2016 WL 1711849 (April 20, 2016) ("While this Office may comment upon what we deem an apparent inequity or unconstitutionality, we may not declare the Act void."). We will attempt to set forth the various legal issues raised by your request. In doing so, please be advised that we cannot anticipate every legal question which might arise in response to the Program. However, if you have additional questions or concerns, we are happy to address them in a follow-up opinion at your request.

² This opinion distinguishes the instant situation from the General Assembly's power to authorize one-time lump sum bonuses in an annual appropriations act, as the Supreme Court of South Carolina has repeatedly declared the South Carolina General Assembly to have plenary authority over the matter of appropriations, except as restrict by the constitution. Amisub of South Carolina, Inc. v. S.C. DHEC, 407 S.C. 583, 591, 757 S.E.2d 408, 412 (2014); Cox v. Bates, 237 S.C. 198, 214, 116 S.E.2d 828, 834 (1960).

I. Article III, Section 30 of the South Carolina Constitution and South Carolina Code of Laws § 4-11-170.

Article III, Section 30 of the South Carolina Constitution states:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

S.C. Const. Art. III, § 30 (emphasis added). The Supreme Court of South Carolina has interpreted “extra compensation” to mean “any compensation over and above that fixed by law or contract at the time the service was rendered.” State ex rel. McLeod v. McLeod, 270 S.C. 557, 559, 243 S.E.2d 446, 447-448 (1978) (emphasis added); see also Bynum v. Barron, 227 S.C. 339, 346, 88 S.E.2d 67, 70 (1955) (upholding the validity of an act of the General Assembly under Article III, Section 30 to the extent it authorized a change in compensation for county officers prospectively, but disallowed portions permitting a retroactive change in compensation).³ Similarly, Section 4-11-170 of the South Carolina Code of Laws prohibits county governing body members from voting to pay an “extra allowance to any person who is paid by salary.” This section also prohibits the county treasurer from knowingly paying an extra allowance to any such person. Id.

This Office has interpreted Article III, Section 30 and Section 4-11-170 to limit the power of county governments as granted by the General Assembly. Op. S.C. Atty. Gen., 2003 WL 22970989 (December 11, 2003).⁴ We have repeatedly taken the position that bonus payments, or payments which would amount to bonus payments, are prohibited when they are “made after services have been rendered or a contract fulfilled.” Ops. S.C. Atty. Gen., 2003 WL 22970989 (December 11, 2003); 2013 WL 3762704 (July 8, 2013) (“the [u]se of public funds to provide any form of compensation (extra compensation, insurance payments, pension payments, etc.) for public employees is unconstitutional if it is greater than that which the State [or political subdivision] has a contractual or legal obligation to provide.”); 1990 WL 599252, at *2 (April 3, 1990) (“Article III, Section 30 would prohibit the payment of additional compensation to public officers, agency, employees, or the like after services have been rendered. To avoid difficulties relative to this constitutional prohibition, compensation or increases thereof should be undertaken prospectively.”); 1989 WL 406130 (April 3, 1989) (S.C. Const. Art. III, § 30 and § 4-11-170 specifically prohibit “bonus payments, retroactive compensation or severance pay” as extra compensation “where such uses of public funds were not fixed by law at the time services were rendered by the public employee.”).

³ See also Op. S.C. Atty. Gen., 2011 WL 2648715 (June 10, 2011) (opining that county magistrate base salary increases would be prospective only “since retroactive application would effectively result in additional compensation being paid after services have been rendered.”).

⁴ This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2013 WL 6516330 (Nov. 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984).

a. Employee Incentive Award.

While the Program describes the employee incentive award as a “bonus,” it is this Office’s opinion that the actual characteristics of the employee incentive award do not place it within the definition of “extra compensation” or “extra allowance” as set forth in McLeod. This Office interprets the employee incentive award as an incentive payment for future service.⁵ In a prior opinion, this Office determined that an “incentive pay plan,” also called an “incentive contract,” which offers an employee “some compensation in addition to a fixed monetary salary” and is “prospectively arranged prior to services being rendered” was not considered “extra compensation” and likely did not violate S.C. Const. Art. III, Section 30 or S.C. Code. Ann. § 8-15-10. Op. S.C. Atty. Gen., 1987 WL 342739 (December 8, 1987) (emphasis added).

However, the employee incentive award could amount to extra compensation, or extra allowance if granted to an employee who could implement the suggestion through his normal job duties. In such a case, the employee has agreed to compensation at a set amount or by a predetermined methodology. Op. S.C. Atty. Gen., 1976 WL 22929 (March 24, 1976) (“No additional sums can be paid over and above the contract price for work agreed to be done under the contract.”) (emphasis in original). In a similar incentive reward program, the General Assembly enacted the Public School Employee Cost Savings Program which prohibited an employee from receiving awards “for an idea that could have been implemented by the employee[s] through [their] normal job duties.” S.C. Code Ann. §59-1-452(C). Another comparable program, the State Employee Suggestion Program states that to be eligible for an award “a suggestion must be beyond normal job duties and responsibilities of the employee.” State of South Carolina, Employee Suggestion Program (ESP) Policy and Procedure Manual.⁶ In this Office’s opinion, any amount awarded in excess of the employee’s agreed compensation for a suggestion which could be implemented within the employee’s normal duties would be a bonus or extra compensation in violation of S.C. Code Ann. § 4-11-170.

Assuming the program will be implemented by the county council in accordance with the Horry County Code, the prospective nature of the program will fix the use of public funds by law before the time services are rendered by the public employee. The language used in both the employee and supervisor incentive provisions exclusively employs the future tense to describe award eligibility. These provisions provide evidence of legislative intent for the program to only apply prospectively. To provide greater evidence of legislative intent, the county council could make a legislative determination that suggestions submitted prior the Program’s adoption are ineligible. Alternatively, the county council could amend the Program to expressly include a limitation for suggestions submitted after the Program’s

⁵ The General Assembly has enacted two programs which provide an employee cash reward for employee actions which result in savings. Included as part of the employment protection for reports of violations of state or federal law or regulation, an employee of a public body who files a report of wrongdoing with an appropriate authority “must be rewarded” twenty-five percent of the estimated net savings resulting from the first year of implementation, but no more than \$2,000. S.C. Code. Ann. § 8-27-20 (1976 Code, as amended). The Public School Employee Cost Savings program was “established for the purpose of making cash awards to individual school district employees for ideas which are proven workable.” S.C. Code. Ann. § 59-1-452(A) (1976 Code, as amended). Under this program, the reward was limited to up to the lesser of twenty-five percent of cost savings for one fiscal year or \$5,000. S.C. Code. Ann. § 59-1-452(C).

⁶ Although the State Employee Suggestion Program is currently referred to in the South Carolina Code of Laws § 8-27-20, after extensive research, it appears that the program is no longer actively administered.

adoption. Based on this Office's interpretation that the Program is only applicable to suggestions submitted after its adoption, a court likely would find that the employee incentive award provision does not violate Article III, Section 30 of the South Carolina Constitution or South Carolina Code of Laws § 4-11-170.

b. Supervisor Incentive Award.

Unlike the employee incentive, it is this Office's opinion that the supervisor incentive, as currently written, would amount to extra compensation or allowance. Whereas the employee renders a service to the county by proposing a cost saving idea which result in confirmed annual budget savings, the direct supervisor of such an employee is not required to take any action to be eligible for the supervisor incentive award. The supervisor incentive acts as a windfall of up to \$25,000 based solely on the good fortune of a subordinate employee suggestion. Because the supervisor incentive eligibility is determined without requiring any action on the part of the supervisor beyond his normal job duties and responsibilities, as set forth in McLeod, such an award would amount to extra compensation or allowance would violate Article III, Section 30 of the South Carolina Constitution and South Carolina Code of Laws § 4-11-170. This is not to say that a supervisor could not be included within the "team of employees" and share in an award as provided in the employee incentive provision. If the county council prefers to retain a separate supervisor incentive provision, the provision could be amended to include a rendered service requirement; e.g. requiring encouragement or support of a supervised employee in the development of the employee suggestion. We reiterate that any such policy decision is a matter beyond the scope of an opinion of this Office.

II. Article X, Section 11 of the South Carolina Constitution

a. Loaning or pledging the credit of the State or any of its political subdivisions.

Article X, Section 11 of the South Carolina Constitution provides, in relevant part:

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution.

S.C. Const. Art. X, § 11.⁷

Our Supreme Court has explained that the purpose of Article X, Section 11... is "to prevent the state from entering into business hazards which might involve obligations upon the public." Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584, 588 (1923). In other words, it has been said that the intent of this constitutional limitation "is to prevent the State from being obligated to use State [ad valorem] tax revenues to pay off the [general obligation] bonds.

⁷ Counties are expressly included within Article X's definition of "political subdivisions." S.C. Const. Art. X, § 14.

Op. S.C. Atty. Gen., 2015 WL 4497734 (July 2, 2015); Carll v. South Carolina Jobs-Economic Dev. Auth., 284 S.C. 438, 443-444, 327 S.E.2d 331, 335 (1985) (the limitations imposed by Article X, Section 11 “relate[] solely to general obligation bonds payable from the proceeds of ad valorem tax levies.”).

In prior opinions, this Office discussed the distinction between the expenditure of present appropriations and the loaning of the State's credit. See Op. S.C. Atty. Gen., 2003 WL 22050883, at *9 (Aug. 29, 2003) (distinguishing purchases made through the issuance of general obligation bonds on a deferred basis and a completed transaction using appropriated funds). As discussed above, when the General Assembly enacted the Public School Employee Cost Savings Program, S.C. Code Ann. § 59-1-452, particular funds were required to be set aside to initially support the program. After two years, the Public School Employee Cost Savings Program was required to be self-supporting. S.C. Code Ann. § 59-1-452(E). While the Program does not indicate how potential incentive payments will be paid, if appropriated and quantifiable funds are used, it is this Office's opinion that such payments likely would not constitute a pledge or loan of credit for purposes of Article X, Section 11.

b. Public funds appropriated to a private entity for a public purpose.

In addition to determining whether there has been a pledge of credit, “Article X, Section 11 is also violated when public funds are appropriated to a private entity and such appropriation is not ‘for a public purpose.’” Op. S.C. Atty. Gen., 2015 WL 4497734 (July 2, 2015). In WDW Properties v. City of Sumter, 342 S.C. 6, 15, 535 S.E.2d 631, 635 (2000), the State Supreme Court reaffirmed “that the question of whether an Act is for a public purpose is primarily one for the Legislature” and the courts will not interfere unless the determination is clearly wrong. The Court articulated a four-part test for whether the public purpose doctrine is violated as follows:

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.

Id. at 15-16 (emphasis in original).

This Office has previously concluded that a program which results in savings to publically financed construction projects complies with the public purpose doctrine. Op. S.C. Atty. Gen., 2015 WL 4497734, at *8 (July 2, 2015) (an owner controlled insurance program which resulted in cost savings and streamlined safety programs for a county construction project would serve a public purpose). In analyzing the Program, we are similarly of the opinion that identifying “annual budgetary savings for the County” would serve a public purpose. However, as we have frequently said in our prior opinions, this Office does not have jurisdiction to investigate and determine facts. Op. S.C. Atty. Gen., 2016 WL 3946156 (July 11, 2016). Therefore, while it is this Office's opinion that developing a program to identify cost savings would serve a public purpose, such a determination involves a question of fact which is ultimately a matter for a court to decide.

III. South Carolina Code of Laws § 4-9-630.

The Supreme Court of South Carolina has explained that Section 4-9-630 of the South Carolina Code of Laws sets forth the powers and duties of the County Administrator.⁸ Eargle v. Horry County, 344 S.C. 449, 452-453, 545 S.E.2d 276, 278 (2001). Section 4-9-630 lists nine non-exclusive duties of the County Administrator as follows:

The powers and duties of the administrator shall include, but not be limited to, the following:

- (1) to serve as the chief administrative officer of the county government;
- (2) to execute the policies, directives and legislative actions of the council;
- (3) to direct and coordinate operational agencies and administrative activities of the county government;
- (4) to prepare annual operating and capital improvement budgets for submission to the council and in the exercise of these responsibilities he shall be empowered to require such reports, estimates and statistics on an annual or periodic basis as he deems necessary from all county departments and agencies;
- (5) to supervise the expenditure of appropriated funds;
- (6) to prepare annual, monthly and other reports for council on finances and administrative activities of the county;
- (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council;
- (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose; and
- (9) to perform such other duties as may be required by the council.

S.C. Code Ann. § 4-9-630 (1976 Code, as amended). This Office's prior opinions have explained that a county council is authorized to established salary schedules and the administrator has a duty to oversee those policies as well as the county council's legislative actions.

According to Section 4-9-30(7), county councils are authorized "to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people ..." Personnel classification and salary schedules are among those policies and procedures a county council is authorized to develop.

Op. S.C. Atty. Gen., 2001 WL 1397514, at *1 (October 18, 2001). It is this Offices opinion, that if the Program is passed by ordinance, it will properly be classified as a legislative action within the county council's statutory authority. S.C. Code Ann. § 4-9-120 (1976 Code, as amended) ("The council shall take legislative action by ordinance..."); Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991) ("[An] ordinance is a legislative enactment and is presumed to be constitutional."). The County

⁸ Horry County operates under the council-administrator form of government pursuant to S.C. Code Ann. §§ 4-9-610, *et seq.* (1976 Code, as amended).

Administrator would be responsible for executing the Program as a legislative action under S.C. Code Ann. § 4-9-630.

IV. South Carolina Code of Laws § 8-15-10.

Section 8-15-10 of the South Carolina Code of Laws describes which entity determines compensation for officers and employees of the State and its political subdivisions as follows:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

S.C. Code. Ann. § 8-15-10 (1976 Code, as amended). As noted above, counties are included within the definition of political subdivision in the South Carolina Constitution. S.C. Const. Art. X, § 14. Under Section 8-15-10, the county council is charged with setting compensation for county officers and employees except as prohibited by the South Carolina State Constitution or otherwise by state law. Ops. S.C. Atty. Gen., 1990 WL 599252 (April 3, 1990); 1990 WL 482429 (June 8, 1990). This Office has previously opined that incentive pay plans do not violate either S.C. Const. Art. III, Section 30 or S.C. Code. Ann. § 8-15-10. Op. S.C. Atty. Gen., 1987 WL 342739 (December 8, 1987). Because we interpret the Program's incentive award to be properly classified as an incentive payment, it is this Office's opinion that the Program complies with Section 8-15-10 of the South Carolina Code of Laws.

V. South Carolina Code of Laws § 8-13-700(A).

Your opinion request asks whether the Program violates § 8-13-700(A) of the South Carolina Code of Laws. Section 8-13-700(A) reads as follows:

No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

S.C. Code. Ann. § 8-13-700(A) (1976 Code, as amended).

It is this Office's opinion that "economic interest", as used in Section 8-13-700(A), does not encompass the Program's incentive awards. The State Ethics Commission's numerous opinions regarding economic interests relate to a public official's, member's, or employee's interests which are distinct from his compensation in that role. See Ops. S.C. St. Ethics Comm., SEC A02014-002 (March 19, 2014) (interest in a commercial district restaurant and property); SEC A02012-002 (March 21, 2012) (commissioner's employer owned a county mine subject to a zoning ordinance); SEC AO2011-002 (July 21, 2010) (city council member owned property connected to a boardwalk); SEC AO2009-005 (May 20,

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2009) (school district trustee contracting with school district for construction services); SEC AO2008-006 (March 19, 2008) (coroner may not order autopsies to be performed at a business with which the coroner is associated).

Similarly, this Office's opinions regarding Section 8-13-700(A) have not interpreted "economic interest" to include compensation for the public entity for the official, member, or employee in that role. Ops. S.C. Atty. Gen., 2011 WL 4592376 (September 23, 2011) (candidate for appointment to the Spartanburg County Commission for Technical and Community Education had an economic interest where she could use the position to influence a governmental decision in which she had a business interest); 2010 WL 3896162 (September 29, 2010) (Fort Law Town Council member who was also a member of the Board of Directors for the Fort Law Community Center should refrain from voting on matters involving an economic interest of the community center). Based on the State Ethics Commissions opinions and this Office's prior opinions, the incentive award likely would not be considered an economic interest governed by § 8-13-700(A).

We encourage you to contact the State Ethics Commission, which has primary jurisdiction over the state's ethics law, for further clarification on whether a particular application of the Program would violate the State Ethics Act, S.C. Code Ann. §§ 8-13-100 *et seq.* See Op. S.C. Atty. Gen., 2014 WL 2120886, at *2 n.2 (May 5, 2014) ("[T]he question of whether 8-13-700 even applies to the scenario here is a factual question to be determined by the Ethics Commission.").

Conclusion

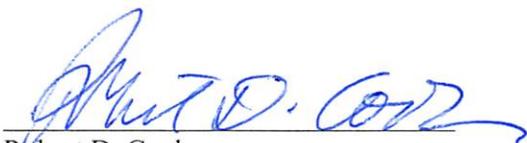
We hope that the guidance provided above will assist you and the Horry County Government in determining how to proceed regarding the Budget Savings Suggestion Program. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly 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. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General