



ALAN WILSON
ATTORNEY GENERAL

November 18, 2016

Ms. Joan E. Winters, Esq.
County Attorney for Chester County
105 Main St.
Chester, SC 29706

Dear Ms. Winters:

Attorney General Alan Wilson has referred your letter dated September 25, 2016 to the Opinions section regarding whether S.C. Code Ann. § 12-28-2740 authorizes the use of “C” funds to pave ingress, egress, and parking areas of fire departments located within Chester County. Your letter further describes the circumstances surrounding the intended use of “C” funds as follows:

On October 13, 2003, Chester County Council created the Chester County Transportation Committee (“CCTC”) for the purpose [of] work[ing] closely with the County’s independent engineering firm and appropriate city and town councils to improve as many roads and other transportation facilities as possible with the funds allocated. At that time, the County also created a countywide transportation plan.

At this time, we have several fire departments with crumbling ingress and egress, along with the parking area. These departments are located on County-owned property and are funded, in part, by the County. It is the desire of the County to use C fund money to pave the ingress, egress and parking areas of these departments. It is the position of the County that it is clear that this is for a public purpose. The general public visits these fire department facilities on a regular basis and depend[s] on the services provided by the departments. Hav[ing] emergency vehicles transverse across crumbling asphalt is not only damaging to the vehicles, but dangerous to their journey.

...

We believe that this use of C Funds is clearly in the public interest of the citizens of Chester County and that this use also constitutes the furtherance of a countywide transportation plan.

Law/Analysis

To address your question, we turn to the portion of the South Carolina Code of Laws governing the distribution of the gasoline tax, often referred to as “C” funds, which is codified at S.C. Code Ann. § 12-28-2740 (1976 Code, as amended). These funds can only be “used in furtherance of a countywide transportation plan adopted by” the CCTC. S.C. Code Ann. § 12-28-2740(B). Subsection (C) directs how

these “C” funds are apportioned between the Department of Transportation and county transportation committees as follows:

At least twenty-five percent of a county's apportionment of “C” funds, based on a biennial averaging of expenditures, must be expended on the state highway system for construction, improvements, and maintenance. The Department of Transportation shall administer all funds expended on the state highway system unless the department has given explicit authority to a county or municipal government or other agent acting on behalf of the county transportation committee to design, engineer, construct, and inspect projects using their own personnel. The county transportation committee, at its discretion, may expend up to seventy-five percent of “C” construction funds for activities including other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.

S.C. Code Ann. § 12-28-2740(C) (emphasis added). This Office’s June 19, 2012 opinion interpreted the above emphasized language where we stated, “Clearly, by this language the Legislature merely designated examples of purposes acceptable for the expenditure of ‘C’ funds by a county transportation committee. A county transportation committee is thus not expressly limited by the above provision to specific projects for the use of ‘C’ funds.” Op. S.C. Atty. Gen., 2012 WL 2484919 (June 19, 2012). In that opinion, we concluded that the use of “C” funds for maintenance of highway/railroad crossings and bridges would likely be an appropriate use “provided that such are acceptable in the county or regional transportation plan adopted by the transportation committee and are designated for a public purpose.” Id.

In this Office’s May 24, 2016 opinion, we considered a similar circumstance where Marlboro County Transportation Commission sought advice on the use of “C” funds to pay for parking lot resurfacing and fencing at a local state-owned lake. There we opined that the proposed use of funds would likely be inappropriate under the statute where we stated the following:

While we believe the expenditure would likely constitute a public purpose, it is not apparent that the public purpose of the improvement projects specified - resurfacing parking lots and fencing benefiting a public lake - comports with the statutory intent for the use of “C” funds for local projects, as set forth by S.C. Code Ann. § 12-28-2740 (2014 & Supp. 2015).

We reach this conclusion in looking to the plain language of the statute. As stated in S.C. Code Ann. § 12-28-2740(B) (2014 & Supp. 2015), “[t]he funds expended must be approved by and used in furtherance of a countywide *transportation plan* adopted by a county transportation committee.” (Emphasis added). And, of the seventy-five percent of “C” funds that can be used for local projects, examples of such local projects include “other local paving or improving county roads, for street and traffic signs, and for other road and bridge projects.” S.C. Code Ann. § 12-28-2740(C) (2014 & Supp. 2015). We believe that each of these purposes directly benefit *transportation* and, pursuant to the rules of statutory construction, other purposes not listed would have to do the same. Therefore, as to whether the resurfacing of parking lots and fencing at Lake Paul A. Wallace would appropriately be a part of the countywide transportation plan and comport

with the uses allocated for “C” funds for local projects, it is our opinion that such use is highly questionable. We believe a court would likely conclude that the use of “C” funds for such uses are outside of the legislative intent specified by the plain language of Section 12-28-2740.

Op. S.C. Atty. Gen., 2016 WL 3355902 (May 24, 2016) (emphasis in original).¹

In your letter you state, “Chester County believes its situation differs from that of Marlboro’s in that the property in question is owned by the County.” However, it is this Office’s opinion that it is the nature of the project’s nexus to transportation which is determinative rather than the ownership of the property for determining the appropriateness of expending “C” funds under Section 12-28-2740. See Op. S.C. Atty. Gen., 1998 WL 746209 (August 13, 1998) (approving of using “C” funds for paving roads in a privately owned industrial part which would become either county roads or part of the state highway system); 1986 WL 508559192043 (August 1, 1986). It is this Office’s interpretation of Section 12-28-2740 that use of “C” funds to pave a parking lot does not comply with the statute. However, if the ingress and egress of the fire department parking lots connect to roads included within a countywide transportation plan, we believe a court would likely approve the use of “C” funds to the extent the repairs would benefit such roads. The line where ingress/egress which serves a countywide transportation plan ends and where benefits solely accrue to the parking lot is a factual determination that is reserved to the courts. See Op. S.C. Atty. Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions”).

This Office agrees that the paving of the fire departments parking lots would serve a public purpose and thus be a permissible use of public funds. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); S.C. Const. art. X, § 5. However, the use of “C” funds on a project which does not benefit a countywide transportation plan approved by the Department of Transportation would be inappropriate. S.C. Code Ann. § 12-28-2740(C), (F). Another source of funding would need to be identified for such a project. Again, whether a project furthers a countywide transportation plan is a factual determination that only a court can decide.

Conclusion

We hope that the guidance provided above will assist you, Chester County, and the CCTC in the decision of how to allocate “C” funds to these infrastructure projects. 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

¹ 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).

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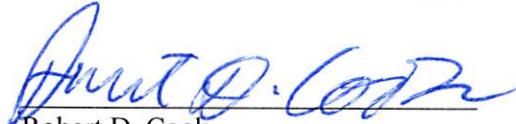
determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General