



ALAN WILSON
ATTORNEY GENERAL

July 22, 2019

The Honorable Sean M. Bennett
Member
South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Bennett:

Attorney General Alan Wilson referred your two letters, both dated July 9, 2019, to the Opinions section for a response. Each letter indicates you seek an opinion of this Office concerning the validity of two bond referenda recently proposed by Dorchester County (the "County"). In one letter, you ask us to consider the validity of the following proposed bond referendum question:

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$__,000,000 for funding the acquisition of land and the design and construction of parks and recreational facilities at various locations through the County?

We understand the County has since specified the amount to be \$38,000,000.

In the other letter, you ask us to consider the validity of a separate bond referendum question.

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in the Summerville, North Charleston and Ridgeville areas of Dorchester County?

As for both questions, you ask whether these questions are "in a permissible form under the holding of Ziegler and any other applicable South Carolina constitutional, statutory, or case law."

Law/Analysis

In Zeigler v. Dorchester County, ___ S.C. ___, 828 S.E.2d 218, 219 (2019), our Supreme Court considered whether the following referendum question was unlawful:

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$ 30,000,000 for funding the

acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$ 13,000,000 for funding recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

The Court relied in part on a prior decision, Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451 (1909), which considered the validity of a referendum question combining bond funding of the extension of electrical lights and water works, and the installation of a sewage system. In Ross, the Court determined that because the referendum contained several “distinct and independent propositions,” the “provision should be made in the submission for a separate vote on each.” Id. at 144, 65 S.E. at 454. The Court in Zeigler also relied on section 7-13-400 of the South Carolina Code (2019). This provision sets forth the statutory requirements for referendum questions and requires the question be presented to allow the voter to vote in favor of or opposed to the issuance of the bonds. S.C. Code Ann. § 7-13-400. The Court in Zeigler reasoned the question presented to the voters “contained two separate questions, and therefore, it was not possible to vote ‘in favor’ of one and ‘opposed’ to another.” Id. at __, 828 S.E.2d at 222. The Zeigler Court held “a ballot referendum proposing bonded indebtedness must contain a single question for each proposal to which voters can respond affirmatively or negatively.” Id. The Court determined “[l]ibraries and recreational facilities are distinct for funding purposes.” Id. at __, 828 S.E.2d at 221. Accordingly, the Court found each required a separate vote.

The County’s proposed referenda separate the two questions of funding libraries and funding recreational facilities. However, you state in your opinion requests you are particularly concerned with whether the County must further parse the two proposed questions into questions dealing with each individual project. Citing to arguments made by the appellants in Zeigler, that voters might wish to vote in favor of one part of the referendum and against another, you state you are not clear on the “distinction between a ‘proposal,’ which must be separately voted on, and a ‘project,’ which apparently does not require obtaining separate voter authorization.”

As you point out, in Zeigler, the Court clarified its holding “does not require municipalities to obtain and issue separate bond for each project they seek to undertake” Id. at __, 828 S.E.2d at 222. As such, we do not believe the County is required to hold a referendum on each project, such as each library facility it intends to construct, in order to avoid the single proposal requirement under South Carolina law.

In addition, you ask us the general question of whether the two questions proposed are valid under South Carolina law. A determination of the validity of a proposed referendum requires a determination of fact, which only a court, not this Office, can decide. Op. S.C. Att’y Gen., 2006 WL 2593077 (S.C.A.G. Aug. 24, 2006) (stating “only a court, not this Office, may serve as a finder of fact and conclusively determine the outcome of a factual issue.”); Hume, Small & Co.

v. Providence Washington Ins. Co., 23 S.C. 190, 193 (1885) (stating misrepresentation is a question of fact). Accordingly, we cannot make such a determination. However, we will attempt to provide you with guidance in this regard.

Section 7-13-400, as previously cited, requires that voters “shall be instructed in substance” of the referendum. As our Supreme Court explained in W.J. Douan v. Charleston County Council, 357 S.C. 601, 612, 594 S.E.2d 261, 266 (2003), “[t]he purpose of section 7–13–400 is . . . to aid the voter in understanding the meaning of his vote” In a 2003 opinion addressing whether bond proceeds could be used for purposes outside those stated in the referendum, this Office considered the general requirements for referenda. Op. S.C. Att’y Gen., 2003 WL 21108486 (S.C.A.G. May 8, 2003). We stated, “a ballot referendum may not confuse or mislead the voters” Id. We further explained:

The general test applied by our Supreme Court as to whether a particular referendum is upheld or set aside is whether “when viewed as a whole, [the referendum] . . . would likely mislead the average voter.” Lowery v. Bright, 234 S.C. 279, 107 S.E.2d 769 (1959). It is the purpose of a bond referendum to “determine the will of the voters upon the assumption of a public debt to the amount of and for the object proposed.” Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax, 202 Va. 462, 117 S.E.2d 753 (1961). The general purpose of the debt “must be stated with sufficient certainty to inform and not mislead voters as to the object in view” The painstaking details of the proposed work or improvements, of course, need not be set out in the ballot. Id.

Id.

In an opinion issued in 2001, we discussed whether a ballot for a half-cent sales tax referendum must list individual projects that would be funded by the proceeds of such a tax. Op. S.C. Att’y Gen., 2001 WL 1736760 (S.C.A.G. Nov. 7, 2001). We concluded

the county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of the funds. In response to your questions, in my opinion, identifying the projects by categories and describing those project categories would suffice for purposes of Section 4-37-30(A)(1)(a). That being said, however, I would encourage as much disclosure to the public as practicable. Thus, although project categories may be sufficient, I would advise against identifying the projects only by reference to a pre-existing program list. The identification and description of the project categories should be adequately detailed in the enacting ordinance. Finally, if identifying the projects by

category, the county must provide an estimated cost of each project category pursuant to Section 4-37-30(A)(1)(c).

Id. While that opinion addressed a referendum on the funding of transportation facilities and section 4-37-30(A)(1) of the South Carolina Code (Supp. 2018) does not apply to the facilities funded in the County's referenda, we find it pertinent to our consideration of the referenda questions you present. We advise that the County be as specific as possible so as to provide the public with the information required to make an informed decision on each of the referendum questions. While the County need not list every possible use for the bond proceeds, we recommend the County provide enough information to avoid misleading the average voter.

Conclusion

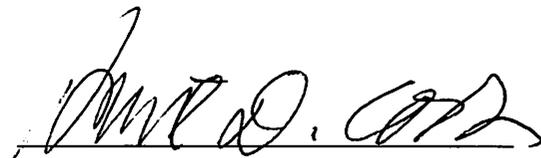
It is our opinion that the foregoing principles of law should be considered by the County in preparing its referendum questions. Within the bounds of the County's discretion, the voters must be able to make an informed decision based upon the questions presented.

Very Truly Yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General