



ALAN WILSON
ATTORNEY GENERAL

March 13, 2024

William H. Johnson, Esq.
Post Office Box 137
Manning, South Carolina 29102

Dear Mr. Johnson:

We understand you are the attorney for Clarendon County and per your letter you are requesting an opinion on behalf of the Clarendon County Council. In your letter, you reference Act 355 of 2004 which you state “authorized Clarendon County Council to impose a one (1%) percent sales and use tax within Clarendon County.” You also state:

The proceeds of the tax were to be distributed to the three (3) school districts in the County. Clarendon County Council enacted an ordinance as authorized, identified as Ordinance # 2005-05. The tax has been collected and distributed according to Act # 355 since the adoption of the ordinance.

The Ordinance went into effect on July 1, 2005. Section 4 of the Act states, “[t]he tax may not be imposed for more than twenty (20) years.” In accordance with the Act, the collection of the sales and use tax is set to expire on June 30, 2025. Clarendon County Council has received a request to extend the Ordinance.

Thus, you request an opinion as to “whether or not legislative authorization is needed to take that action and impose the tax beyond June 30, 2025.”

Law/Analysis

As you explained in your letter, the Legislature enacted Act 355, the “Clarendon County School Districts Property Tax Relief Act,” in 2004 allowing Clarendon County to impose a one percent sales and use tax within the County to be distributed to its three school districts to service debt or defray the cost of capital improvements. 2004 S.C. Acts 355. As you point out, the Act states: “The tax authorized by this act may be imposed by ordinance of the governing body. The tax may not be imposed for more than twenty years.” Id. Under the heading “Applicable dates” the Act states:

Section 5. (A) The tax must be imposed beginning upon the first day of the third full month following the filing of the imposition ordinance with the South Carolina Department of Revenue.

(B) The tax terminates upon the earlier of:

- (1) the final day of the maximum time specified in the ordinance for the imposition; or
- (2) sixty days following the filing with the Department of Revenue of a certified copy of an ordinance of the governing body terminating the tax.

Id.

Along with your request, you provided us with ordinance 2004-02 implementing the sales and use tax “for a period of twenty years to begin June 1, 2004, and ending May 31, 2024.” In 2005, the Legislature amended Act 355 with the passage of Act 195. Act 195 deleted the exemption for food which may be purchased with United States Department of Agriculture food coupons contained in Act 355. 2005 S.C. Acts 195. Subsequent to the legislative amendment, Clarendon County adopted ordinance 2005-05 revising ordinance 2004-02. This revised ordinance states in relevant part, “the tax is imposed for a period of twenty years to begin July 1, 2005, and ending June 30, 2025.” Thus, you now question whether the tax can be imposed beyond the June 30, 2025 date as provided in the revised ordinance.

While general law allows counties under certain circumstances to impose local option sales taxes, in this instance, Clarendon County’s authority to impose this particular sales and use tax is limited to the terms stated in Act 355 and the subsequent amendments in Act 195. Act 355 gives Clarendon County the authority to impose the tax by ordinance, but also specifies the tax “may not be imposed for more than twenty years.” “When a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning.” Peake v. S.C. Dep’t of Motor Vehicles, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (Ct. App. 2007). Thus, the plain language of the Act limits the imposition of the tax for more than twenty years.

One could argue the twenty-year limitation limits the imposition in a particular ordinance and a subsequent ordinance could be adopted reimposing the tax for another period of time not to exceed twenty years. However, we do not believe this was the intent of the Legislature when it enacted Act 355. First, we, just as a court, have “no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy.” Consumer Advoc. for State v. S.C. Dep’t of Ins., 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (quoting Kinard v. Moore, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951)). Thus, if the twenty-year limitation were applicable to the ordinance as opposed to the tax itself, the Legislature would have stated as such. It did not and rather mandated “[t]he tax may not be imposed for more than twenty years.” Additionally, allowing the County to continually reimpose the tax would render the twenty-year limitation

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meaningless. Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (“This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.”). Finally, in our research, we found other instances in which the Legislature granted similar authority to impose local option sales taxes to other counties. In one instance, the Legislature did not include a time limitation on the imposition of the tax. 2007 S.C. Acts 137 (authorizing the Dillion County School Board to impose two-percent sales and use tax upon the passage of a referendum). However, in most instances, the Legislature imposed a limitation on the amount to time the tax could be imposed. 2001 S.C. Acts 146 (placing a twenty-five-year limitation on a sales and use tax for Jasper County); 2000 S.C. Acts 441 (imposing a twenty-five-year limitation on a sales and use tax for Chesterfield County). Notably, the Legislature granted Lexington County the authority to impose a local option sales and use tax through the enactment of Act 378 of 2004. 2004 S.C. Acts 378. That act contained a seven-year limitation on the imposition of the tax, stating: “The special sales and use tax authorized by this act is imposed for seven years, beginning January 1, 2005, but it may be reimposed or extended by the General Assembly by law.” Id. The Legislature twice enacted subsequent legislation extending this limitation seven more years each time. 2011 S.C. Acts 88; 2018 S.C. Acts 278. While that legislation specifies any reimposition or extension requires action by the Legislature, we believe the same is true for the twenty-year limitation contained in Act 355. Including a limitation on the time evidences clear intent by the Legislature to impose a restriction on the amount of time a tax could be imposed. Otherwise, as the Legislature did regarding the Dillion County School Board, it would not have included a time limitation thereby allowing Clarendon County to impose whatever limitation on the tax it desired in the ordinance. As such, it is our opinion that legislative authorization is needed to impose the tax beyond the June 30, 2025 termination.

Conclusion

By adopting Act 355 of 2004, the Legislature gave Clarendon County the authority to impose a one percent sales and use tax for educational purposes. The plain language of Act 355 of 2004, clearly limits the imposition of the tax to twenty years. By including such a limitation, the Legislature expressed its intent to limit the imposition of the tax. To find otherwise runs afoul of the Legislature’s intent to limit the authority given to Clarendon County. Therefore, it is our opinion if Clarendon County wishes to impose the tax for more than the twenty-year timeframe allowed under Act 355, it must seek legislative authorization to do so.

Sincerely,



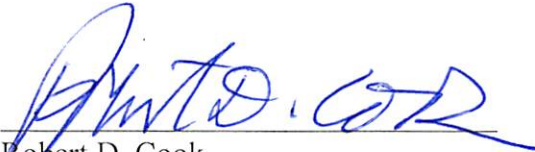
Cydney Milling
Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "R.D. Cook", written over a horizontal line.

Robert D. Cook

Solicitor General