ALAN WILSON
ATTORNEY GENERAL

December 31, 2020

The Honorable RJ May, III
Member
South Carolina House of Representatives
District No. 88
P.O. Box 85924
Lexington, SC 29073

Dear Representative May:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter states the following:

> The South Carolina Public Service Authority, otherwise known as Santee Cooper, has installed outdoor lighting systems in private developments and rented them to the Homeowners Associations (HOAs).
>
> Frustrated with the long-term costs, a number of HOAs have reached out to Santee Cooper in an effort to reach an agreement to either buy these outdoor lighting systems or have ownership transferred to the HOAs.
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> Last year, Santee Cooper took the position in an email, which is enclosed, that it could not sell these lighting system "assets" without an act of the General Assembly, citing the following portion of South Carolina Code Section 58-31 - 30(B):
>
> "Without prior approval from the General Assembly by act, the authority must not sell, transfer, lease, dispose of, or convey any property, real, personal, or mixed, of the authority used in the generation, transmission, or distribution of electricity, beyond that property considered to be surplus."
>
> Santee Cooper goes on to state in the email, "This lighting asset is an installed and functioning outdoor lighting system asset generating monthly revenue for Santee

Cooper, and does not meet the statutory definition of 'surplus.' It is also neither obsolete nor scrap material."

I am seeking an opinion as to whether Code Section 58-31-30(B) applies to these outdoor lighting system rental agreements between Santee Cooper and HOAs.

If the code section applies, it would seem the General Assembly is required to provide "prior approval ... by act," not only to the sale of these lighting system assets owned by Santee Cooper, but also for Santee Cooper to enter into rental agreements with HOAs for these lighting systems to start with. If the General Assembly has not approved by act Santee Cooper entering into these lighting system rental agreements with HOAs if required under 58-31-30(B), are these rental agreements invalid?

Law/Analysis

It is this Office's opinion that a court would likely hold S.C. Code § 58-31-30(B) does not require an act of the General Assembly for Santee Cooper to sell an outdoor lighting system to a HOA. Initially, it should be noted that this opinion assumes the facts presented in the request letter as this Office does not have the authority of a court to find facts in an opinion. The request letter and attached email do not describe the lighting system other than to mention that there are different options regarding "poles and/or lights" which may adjust the costs of the lighting system. There is no indication that the lighting system at issue contains solar cells or is otherwise capable of generating electricity. Bearing that in mind, this opinion will next turn to the rules of statutory construction, the text of section 5-31-30(B), and its relevant legislative history to analyze what property conveyances require the prior approval of the General Assembly.

Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in pari materia and must be construed together, if possible, to produce a single, harmonious result." Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465, 468 (2010).

The powers granted to Santee Cooper in section 58-31-30 have been amended several times since its enabling legislation in 1934. See 1934 (38) 1507. However, the quoted restriction on

transferring property was only relatively recently adopted in 2005. See 2005 Act No. 137, § 6. Prior to the 2005 Act, the South Carolina Supreme Court interpreted section 58-31-30(B), formerly at 1962 Code § 59-3, as follows:

> Section 59—3(4) grants the Authority the power:
>
> 'To acquire, purchase, hold, use, lease, mortgage, sell, transfer, and dispose of any property, real, personal or mixed, or any interest therein.'
>
> This is further explained in the final paragraph of Section 59—3, which provides:
>
> 'The powers herein conferred upon the board of directors shall not be construed to give the board of directors the power to sell, except by way of mortgage or deed of trust, all of the physical property of the Authority, but the board of directors may sell any surplus property which it may acquire and which said board of directors shall deem not to be necessary for the purpose of the development.'
>
> The words 'acquire' and 'purchase', as set forth in the statutory provision quoted above, refer to methods of acquisition. Those words are followed by the words 'hold' and 'use', referring to methods of occupancy. It, therefore, follows that the words 'lease, mortgage, sell, transfer and dispose' refer to methods of disposition. Accordingly, I find that [Santee Cooper] is granted the specific statutory authority to buy, sell and dispose of by lease any property, real, personal, or mixed, or any interest therein.

Cooper v. S.C. Pub. Serv. Auth., 264 S.C. 332, 338–39, 215 S.E.2d 197, 200 (1975) (emphasis added).

The 2005 Act articulates a method that allows Santee Cooper to dispose of property other than that considered surplus with the General Assembly's approval. In relevant part, the 2005 Act is titled, "An Act ... to amend Section 58-31-30, as amended, relating to the powers of the Public Service Authority, so as to prohibit the authority from disposing of certain property without prior approval of the General Assembly or from inquiring into the feasibility of disposing of its property ..." 2005 Act No. 137 (emphasis added). As amended, section 58-31-30(B) now reads:

> (B) The powers conferred by subsection (A) upon the board of directors may not be construed to give the board of directors the power to sell, lease, or dispose of, except by way of mortgage or deed of trust, all of the property, real, personal, or mixed, of the authority, but the board of directors may sell, lease, or dispose of any surplus property which it may acquire and which the board of directors deems not to be necessary for the purpose of the development. Without prior approval from the General Assembly by act, the authority must not sell, transfer, lease, dispose of, or convey any property, real, personal, or mixed, of the authority used in the

> generation, transmission, or distribution of electricity, beyond that property considered to be surplus. However, the authority may lease property owned by the authority, including property within the authority's Federal Energy Regulatory Commission Project boundaries, provided the lease does not substantially or materially impair its ability to meet electricity generation, transmission, and distribution needs of its ongoing operation including an adequate reserve capacity and such growth in needs as reasonably may be forecasted. Further, the lease must be in the best interests of the authority as defined in Section 58-31-55(A)(3).
> . . .

S.C. Code Ann. § 58-31-30 (2015) (emphasis added). The statutory language interpreted by the Cooper Court remains unaltered and continues to allow Santee Cooper to dispose of property "deem[ed]not to be necessary for the purpose of the development," as determined by its board of directors. Id. However, the language added by the 2005 Act clarifies that non-surplus property held by Santee Cooper, "real, personal, or mixed," that is "used in the generation, transmission, or distribution of electricity" cannot be disposed of without prior approval from the General Assembly. Id. This plain language indicates that Santee Cooper may still dispose of property that its board of directors finds to be surplus or unnecessary "for the purpose of the development." Id. Further, the 2005 Act contains an exception to the requirement for General Assembly preapproval by explicitly permitting Santee Cooper to lease property so long as "the lease does not substantially or materially impair its ability to meet electricity generation, transmission, and distribution needs" including a reserve capacity to meet reasonable growth forecasts. Id.

The above emphasized language in section 58-31-30(B) is quoted in both the request letter and the email attachment. Again, this sentence relates to property that is "used in the generation, transmission, or distribution of electricity" and is not considered surplus. The request letter quotes the following explanation for why lighting system may not be sold. "This lighting asset is an installed and functioning outdoor lighting system asset generating monthly revenue for Santee Cooper, and does not meet the statutory definition of 'surplus.'" Presumably, the explanation is that any property owned by Santee Cooper which is "generating monthly revenue" is included within the category of "generation" and, therefore, requires a legislative act before Santee Cooper is authorized to dispose of it. However, this broad reading of "generation" ignores its context within the rest of section 58-31-30(B); namely that the phrase "generation, transmission, or distribution of electricity" refers to process of manufacturing electricity. See JOEL B. EISEN ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT 66 (Robert C. Clark et al. eds., 4th ed. 2015) ("The physical equipment of a modern electric power system is divided into three basic categories: generation, transmission and distribution."). In general, these three categories are understood as follows:

> Most electricity is generated by large and immovable power plants, making it necessary to transport electricity from the generating plant site to the ultimate consumer. The transmission system (or "grid") accomplishes this task with an

> interconnected system of lines, distribution centers, and control systems. Transmission lines are the lines commonly called "high voltage" lines placed on high towers along wide rights of way. ...
>
> ...
>
> The distribution system consists of substations, poles, and wires common to many neighborhoods as well as underground lines found in many other areas. ...

Id. at 68-69. This understanding of the phrase "generation, transmission, or distribution of electricity" harmonizes with Santee Cooper's other listed powers within the same statute. For instance, subsection (A)(7) authorizes Santee Cooper

> to build, acquire, construct, and maintain power houses and any and all structures, ways and means, necessary, useful or customarily used and employed in the manufacture, generation, and distribution of water power, steam electric power, hydroelectric power, and any and all other kinds of power, including power transmission lines, poles, telephone lines, substations, transformers, and generally all things used or useful in the manufacture, distribution, purchase, and sale of power generated by water, steam, or otherwise.

S.C. Code § 58-31-30(A)(7). Similarly, subsection (A)(8) authorizes Santee Cooper "to manufacture, produce, generate, transmit, distribute, and sell water power, steam electric power, hydroelectric power, or mechanical power within and without the State of South Carolina." S.C. Code § 58-31-30(A)(8). When subsection (B) is read in context with the listed powers in subsection (A), it appears that the General Assembly intended that the property requiring legislative approval for its disposition would not extend to all property that may generate revenue, but only to property which is involved in the generation, transmission, and distribution of electricity.

As noted at the outset of this opinion, the lighting systems at issue have not been comprehensively described. There is, however, no indication that the lighting systems are capable of generating electricity. Because the email attachment lists "poles" as a component of the lighting system, it may be argued that the lighting systems are encompassed in either the transmission or distribution systems. However, that determination requires findings of fact which are beyond the scope of this Office's opinions.

Finally, the request letter asks about Santee Cooper's ability to lease lighting systems without prior approval of the General Assembly under section 58-31-30(B) if the company maintains these systems are unable to be sold according to the same section. As described above, it is this Office's opinion that a court would interpret the final sentence of the first paragraph in section 58-31-30(B) as an exception to the preapproval requirement for leasing non-surplus

property. Specifically, Santee Cooper may lease its property so long as the lease "does not substantially or materially impair does not substantially or materially impair its ability to meet electricity generation, transmission, and distribution needs" including a reserve capacity. Therefore, a court may find property which Santee Cooper is authorized to lease because there is adequate reserve capacity is not authorized to be sold without prior General Assembly approval because it is non-surplus.

Conclusion

As is described more fully above, it is this Office's opinion that a court would likely hold S.C. Code § 58-31-30(B) does not require an act of the General Assembly for Santee Cooper to sell an outdoor lighting system to a HOA. When subsection 58-31-30(B) is read in context with the listed powers in subsection (A), it appears that the General Assembly intended that the property requiring legislative approval for its disposition would not extend to all property that may generate revenue, but only to property which is involved in the generation, transmission, and distribution of electricity. The request letter and attached email do not describe the lighting system other than to mention that there are different options regarding "poles and/or lights" which may adjust the costs of the lighting system. There is no indication that the lighting system at issue contains solar cells or is otherwise capable of generating electricity. Because the email attachment lists "poles" as a component of the lighting system, it may be argued that the lighting systems are encompassed in either the transmission or distribution systems. However, that determination requires findings of fact which are beyond the scope of this Office's opinions.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General