

MEMORANDUM

TO: Chairman Deese and Members, Capital Project Sales Tax Commission

FROM: Steve Willis, County Administrator *SW*

TODAY'S DATE: April 14, 2020

DUE DATE: N/A

SUBJECT: **Projects with Legal Concerns**

County Bond Attorney Frannie Heizer, of the Burr Forman law firm, has been researching the law following a recent court case involving Calhoun County's recent Capital Project Sales Tax. As part of that election, fire trucks, radio equipment, and ambulances were acquired. The county was sued by the South Carolina Public Interest Foundation.

The lawsuit alleged that the fire apparatus, ambulances, and radios constituted "equipment" which is not authorized by the state law. There is no disputing that these types of "equipment" items are not specifically covered by the state code but are commonly accepted as capital expense items.

Judge Brian Gibbons, our resident judge in the Sixth Circuit, heard the case. He dismissed the lawsuit on a technicality regarding the timeliness of the filing but notably did not dismiss the lawsuit for lack of merit in the case. The dismissal is under appeal but the plaintiffs are not likely to prevail.

Bond attorneys across the state have now opined that until the state law regarding the sales tax can be amended to specifically include these type items that they should not be included in a Capital Project Sales Tax ballot question. Any ballot question that includes such in 2020 will most assuredly draw a legal challenge and would jeopardize the entire ballot question.

Pursuant to legal advice, I respectfully request that the following projects/ portions of projects be removed from consideration by the Commission:

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- Lancaster County Fire Rescue – Apparatus: entire project.
- USC Lancaster – Highway 9 Pedestrian Connection: The design and construction would be acceptable but not the study component.

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- City of Lancaster – Gay Street Cultural Corridor Streetscape: the lighting component would not be eligible for funding but the remainder would be eligible.
- Lancaster County Parks and Recreation – Walnut Creek Field Improvements: The synthetic turf would be eligible but not the lighting component.
- Lancaster County Economic Development – Airport Industrial Park Road: while not specifically listed on the summary sheet, any street lighting would be ineligible.
- City of Lancaster – Gay Street Commons: the lighting component would not be eligible for funding but the remainder would be eligible. ** Note: the artwork component would need to be reviewed by legal counsel once the type of artwork is specified.

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- City of Lancaster – Petal Park: The artwork component would need to be reviewed by legal counsel once the type of artwork is specified.
- Lancaster County – Public Safety Communications: entire project.
- Educational Foundation of USC Lancaster: the planning component would not be an eligible expense but construction of a health education facility would be eligible.
- Town of Van Wyck – Community Park: The artwork component would need to be reviewed by legal counsel once the type of artwork is specified.
- Lancaster Dixie Baseball – Upgrade Field Lighting: entire project.

Staff will prepare a letter to the above applicants informing them of the legal findings related to their submission.

While it will not help this year, we will be asking to have this section of state law amended to include capital equipment items during the 2021-2022 Legislative session.

Please advise if any additional information is needed.

SW

cc: County Council
Alison Alexander, Deputy County Administrator
Frannie Heizer, Burr Forman Law Firm
John DuBose, County Attorney