COUNTY COUNCIL OF BEAUFORT COUNTY

ADMINISTRATION BUILDING
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
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AGENDA
EXECUTIVE COMMITTEE
Monday, March 13, 2017
4:00 p.m.
Executive Conference Room, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road, Beaufort

Committee Members:
- Jerry Stewart, Chairman
- Gerald Dawson
- Brian Flewelling
- Alice Howard
- Stu Rodman

1. CALL TO ORDER – 4:00 P.M.

2. AN ORDINANCE AUTHORIZING THE ASSIGNMENT OF CERTAIN UTILITY EASEMENTS TO BEAUFORT-JASPER WATER AND SEWER (backup)

3. DISCUSSION / SOUTH CAROLINA ATTORNEY GENERAL'S OPINION REGARDING ROAD CONSTRUCTION AND MAINTENANCE (backup)

4. DISCUSSION / TECHNICAL COLLEGE OF THE LOWCOUNTRY / FORGIVENESS OF 2006 GENERAL OBLIGATION BOND (backup)

5. ADJOURNMENT

ORDINANCE 2017 / _____

AN ORDINANCE AUTHORIZING THE ASSIGNMENT AND/OR GRANTING OF CERTAIN UTILITY EASEMENTS TO BEAUFORT-JASPER WATER AND SEWER AUTHORITY

WHEREAS, Beaufort County is the owner of that certain property located at the intersection of Lady's Island Parkway and Rue Du Bois Road on Lady's Island, Beaufort County, South Carolina, Beaufort County Tax Identification Number R200 018 000 020B 0000; and

WHEREAS, said property has been developed into a public park and is commonly known as Crystal Lake Park; and

WHEREAS, as part of the development of the park, water and sewage systems were installed as part of the infrastructure; and

WHEREAS, in order to install said water and sewer systems, Beaufort County obtained Limited Utility Easements from adjacent property owners for the purpose of boring, laying, constructing, maintaining, operating, repairing, replacing and removing underground pipelines, together with valves, tie overs, and appurtenant facilities for the purpose of sanitary sewer or substances which can be transported through a pipeline; and

WHEREAS, and more specifically, Limited Utility Easements, for valuable consideration, were obtained by Beaufort County and were recorded in the Office of the Beaufort County Register of Deeds as follows:

1. WB Rentals, LLC granted to Beaufort County, a limited utility easement as more particularly described within said easement on December 1, 2014 and recorded on December 9, 2014 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3365 at Page 1028;

2. R. Ray Kearns, Jr. granted to Beaufort County, a limited utility easement as more particularly described within said easement on November 24, 2014 and recorded on December 17, 2014 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3367 at Page 2202;

3. Gibson Enterprises, L.P. granted to Beaufort County, a limited utility easement as more particularly described within said easement on December 15, 2014 and recorded on December 17, 2014 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3367 at Page 2207;

4. Ameris Bank granted to Beaufort County, a limited utility easement as more particularly described within said easement on January 20, 2015 and recorded on January 29, 2015 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3375 at Page 3263; and

5. Beaufort County School District granted to Beaufort County, a limited utility easement as more particularly described within said easement on February 26, 2015 and recorded on March 5, 2015 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3383 at Page 927; and

WHEREAS, Beaufort County acquired all that certain piece, parcel and lot of land, with improvements, referenced by the Beaufort County Office of the Assessor as R200 018 000 020B 0000 by Deed from The Trust for Public Land recorded in the Office of the Register of Deeds on October 15, 2004 and recorded in Book 2036 at Page 1987; and

WHEREAS, said property contains improvements that require water/sewer services and the County is desirous of turning the existing water/sewer systems over to Beaufort-Jasper Water and Sewer Service by granting a limited utility easement across R200 018 000 020B 0000 for said purposes; and

WHEREAS, Beaufort-Jasper Water and Sewer Authority ("BJWSA") has requested an assignment and/or grant of these easements in order to manage, maintain and operate the water/sewer systems on and under those portions of the properties described in the aforementioned easements of record for the benefit of the park; and

WHEREAS, staff has reviewed this request and believes it is in the best interest of the County to assign the aforementioned easements to BJWSA; and

WHEREAS, S.C. Code Ann. § 4-9-130 requires the transfer of any interest in real property owned by the County to be authorized by the adoption of an Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL, that the County Administrator is hereby authorized to execute any and all documents necessary to assign and/or grant to BJWSA the necessary easements mentioned above for the perpetual management, maintenance and operation of the water/sewer systems thereon and which service PIN R200 018 000 020B 0000.

ADOPTED BY BEAUFORT COUNTY COUNCIL, BEAUFORT, SOUTH CAROLINA, ON THIS _____ DAY OF _____, 2017.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY:_____
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

_____
Thomas J. Keaveny, II, County Attorney

ATTEST:

_____
Ashley M. Bennett, Clerk to Council

First Reading:
Second Reading:
Public Hearing:
Third and Final Reading:

ALAN WILSON
ATTORNEY GENERAL

November 15, 2016

G. Lee Cole, Jr., Esq.
Town of Williamston Attorney
PO Box 315
Williamston, SC 29697

Dear Mr. Cole:

Our Office has received your opinion request regarding whether a county may require a municipality to be responsible for maintenance and repair of county roads located inside the corporate limits of a municipality. Specifically, you state the following:

> [a] South Carolina municipality has, within its corporate limits, state maintained roads, roads that have been historically maintained by the county, and very few roads that have been built and maintained by the municipality. The municipality has never formally nor informally accepted the responsibility to repair or maintain any roads that have been historically maintained by the county, and the municipality considers these roads to be county roads. The municipality's position is that the maintenance and repair of said roads are the county's responsibility pursuant to S.C. Code Ann. Sec. 57-17-10, *et seq*. The county's position is that the repair and maintenance of said roads are the municipality's responsibility pursuant to S.C. Code Ann. Sec. 5-27-120.

Our understanding of your question is that the roads that you refer to as "county roads" were built and until recently, maintained by the county. The Town of Williamston has never repaired these "county roads." We will answer your question accordingly.

LAW/ANALYSIS:

We will begin our analysis by reviewing the language of sections 5-27-120 and 57-17-10 of the South Carolina Code and other related statutes. Section 5-27-120 addresses the repair of streets in municipalities which have a population of greater than 1,000[1] and it states:

> [t]he city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested

[1] According to its website, the Town of Williamston has a population of 3992. See http://www.williamstonsc.us/about/

> with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

S.C. Code Ann. § 5-27-120 (1976 Code, as amended).

Section 5-27-10 is pertinent because it grants municipal councils the power to establish and improve roads. It states:

> [w]henever the mayor and aldermen of any city or the intendant and wardens of any town in this State shall think it expedient to widen, open, lay out, extend or establish any street, alley, road, court or lane, they may purchase the lot, lots or parts of lots of land necessary for such street, alley, road, court or lane, and the fee simple of such land shall be vested in such city or town for the use of the public from the day of delivery of the deed of sale.

S.C. Code Ann. § 5-27-10 (1976 Code, as amended).

Section 57-17-10 grants county councils control over public roads, which includes the repair of the roads. It provides:

> [a]ll roads, highways and ferries that have been laid out or appointed by virtue of an act of the General Assembly, an order of court or an order of the governing body of any county are declared to be public roads and ferries, and the county supervisor and the governing body of the county shall have the control and supervision thereof. The county supervisor and governing body of the county may order the laying out and repairing of public roads where necessary, designate where bridges, ferries or fords shall be made, discontinue such roads, bridges and ferries as shall be found useless and alter roads so as to make them more useful.

S.C. Code Ann. § 57-17-10 (1976 Code, as amended).

Additionally, county councils are required by statute to repair the roads in the county. Section 57-17-10 states:

> [t]he governing body of each county shall take charge of and superintend the repair of the highways in the county. The bridges shall be repaired under its supervision, and the expense thereof shall be paid out of the money in the county treasury raised and appropriated for this purpose.

S.C. Code Ann. § 57-17-70 (1976 Code, as amended).

The language of section 5-27-120 is plain and clear that municipal councils in municipalities having a population greater than 1000 shall repair the streets within the municipal limits.[2] The court in Vaughan v.

[2] In a prior opinion, we discussed some principles of statutory construction:

Town of Lyman, 370 S.C. 436, 635 S.E.2d 631 (2006), agrees with this conclusion, stating that "section 5-27-120 "clearly defines the duty to the general public of a municipality to maintain its streets." The issue appears to be whether county councils can also be responsible for repairing roads which are located within the limits of a municipality.

In a February 25, 1988 opinion, our Office discussed how "it is settled law that counties and municipal corporations have only such powers as are granted to them by legislative enactment." Op. S.C. Atty. Gen., February 25, 1988 (1988 WL 383501) (quoting Williams, et al. v. Wylie, et al., 217 S.C. 247, 60 S.E.2d 586 (1950); 56 Am.Jur.2d, Municipal Corporations, etc., Section 193)). The South Carolina Constitution requires the Legislature to equip counties with certain powers, duties, and functions and it provides:

> [t]he General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided.

S.C. Const. art. VIII, § 7.

In response to the State Constitution, the Legislature enacted section 4-9-30, which grants county councils certain powers, including the right to "make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads. . . ." S.C. Code Ann. § 4-9-30(5)(a)(1976 Code, as amended).

Similarly, the State Constitution requires the Legislature to provide municipalities with powers, duties, and functions. S.C. Const. art. VIII, § 9 states that "[t]he structure and organization, powers, duties,

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> "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriffs Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). "[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention." State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct.App. 2011).

Op. S.C. Atty. Gen., September 18, 2013 (2013 WL 5494616).

functions, and responsibilities of the municipalities shall be established by general law. . . ." The Legislature granted powers to municipalities through section 5-7-30, which provides:

> [e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets. . . .

S.C. Code Ann. § 5-7-30 (1976 Code, as amended).

In our 1988 opinion, we discussed how sections 4-9-30[3] and 5-7-30 granted police power to both counties and municipalities (although a municipality can only exercise its police power within the territory of the municipality). See Op. S.C. Atty. Gen., February 25, 1988, supra. Specifically discussing section 5-7-30, we determined that county councils can not exercise their police power within the territorial limits of municipalities without the consent of the municipal councils. Our explanation was that:

> [t]his express grant of police power to municipalities, coupled with the apparent lack of any express grant of power to counties to regulate matters within municipalities, militates against any notion that a county, without first obtaining the agreement or permission of a municipality situated within geographic boundaries of the county, may extend its police power to reach matters occurring within the territorial limits of the municipality.

Id.

We further explained in our opinion that:

> [t]his Office has, on several occasions, expressed its belief that a county's exercise of police power is restricted to the unincorporated areas of the county. In an opinion dated October 2, 1984, the 'intent of the General Assembly to recognize the autonomy of a municipality within its borders and likewise recognizes the autonomy of the county within the unincorporated areas of the county' was discussed. Likewise, in an opinion dated May 21, 1987, we concluded that a Richland County anti-smoking ordinance would be of no effect for facilities of the Richland County Recreation Commission located within a municipality of the county.
>
> Our beliefs are in accordance with the general law on this issue. Counties and cities are viewed as co-equal political subdivisions which are independent of each other politically, geographically, and governmentally. City of Richmond v. Board of Supervisors of Henrico County, 199 Va. 679, 101 S.E.2d 641 (1958); Murray v. City of Roanoke, 194 Va. 321, 64 S.E.2d 804 (1951).

[3] Section 4-9-30 was referred to in the opinion as section 4-9-10, et seq., Act 283, and the Home Rule Act.

Id.

Furthermore, case law shows that, as a result of sections 5-27-120 and 5-27-10 (and their prior versions), municipal councils are in control of the roads located within their municipal limits and they have the power to regulate and manage such roads. Our State Supreme Court explained in Leonard v. Talbert, 222 S.C. 79, 83–84, 71 S.E.2d 603, 604–05 (1952) that:

> [o]rdinarily, county authorities have no power to control streets within municipalities, except where the statute so provides. Martin v. Saye, 147 S.C. 433, 145 S.E. 186. In this State, as in most States, there are statutes vesting such control in the corporate authorities of cities and incorporated towns. The usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways located therein. Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584, 587.[4]

Our State Supreme Court opined in Whitlock v. Town of Jonesville, 111 S.C. 391, 98 S.E. 142, 142 (1919), that section 2951 of the Code of 1912 (now section 5-27-120) "gives city councils the same rights in the management of its streets as are given to county boards of commissioners." The court examined section 1932 of the Code of 1912 (now section 57-17-10), which gave "to the county boards of commissioners the right 'to discontinue such roads, bridges and ferries as shall be found useless, and to alter roads so as to make them more useful'" and found that a town council had the same right to alter a road as a county council did under then section 1932.

After reviewing the law, our opinion is that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits. The Legislature granted municipal councils police power over roads and streets located within the municipal limits. As previously stated, section 5-27-120 requires the municipal councils of municipalities of a certain size to repair the streets within their municipal limits[5]. Section 5-27-120 also grants municipal councils the same control and

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[4] When reaching its conclusion, the court in Chapman v. Greenville Chamber of Commerce, supra considered section 2951 of the Code of 1912, which was a prior version of section 5-27-120, and which stated that the municipal council was vested "with all the powers, rights and privileges within the limits of said city that are now given, or that may hereafter be given to the county board of commissioners of the several counties of this state as to the public roads." The court also considered section 2926 of the Code of 1912, which was a prior version of section 5-27-10, and which stated that "the said city council shall have, and is hereby given, the further authority to lay out and open new streets in said city, and to close up, widen, or to otherwise alter those now in use, or those which may hereafter be established, whenever, in their judgment, the same may be necessary for the improvement or convenience of said city."

[5] As section 5-27-120 specifically directs municipal councils to "repair all the streets, ways and bridges within the limits of the city or town," we believe it is irrelevant if the municipal streets were laid out or appointed by General Assembly act, court order, or county council order, as provided for in section 57-17-10. See Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122) (quoting Capco of Summerville, Inc. v. J.H. Gayle Constr. Co. Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006)) ("[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect"); Op. S.C. Atty. Gen., March 20, 2006 (2006 WL 981695) (quoting Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Op. Atty. Gen. dated August 5, 1986)) ("[i]t is a rule of statutory construction that general and specific

supervision over the city streets as the county councils have over the public roads, and the same rights to lay out, repair, discontinue, and alter the city streets under section 57-17-10.

We believe that county councils are only responsible for repairing roads which are in unincorporated areas of the county. Section 57-17-10 expressly states that county councils are responsible for repairing highways in the county. The Legislature did not grant county councils the ability to exercise any power within the territory of a municipality without the permission of the municipal council. And as we stated in our February 25, 1988 opinion, "[a]s a governmental entity of the state, a county possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments; and powers not conferred are just as plainly prohibited as though expressly forbidden." 20 C.J.S. Counties, Section 49, pp. 802–803. Op. S.C. Atty. Gen., February 25, 1988, supra.

Our conclusion is supported by other provisions of law which recognize the autonomy of municipalities. In our prior opinion, we opined that in section 4-9-40, "the legislature, itself, seems to have, at least, implicitly recognized a limitation on the authority of counties to act within the boundaries of municipal corporations." See Op. S.C. Atty. Gen., February 25, 1988, supra. Section 4-9-40 grants the county the ability to contract for services within municipalities. It states:

> [a]ny county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. *Provided,* however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

S.C. Code Ann. § 4-9-40 (1976 Code, as amended).

As shown above, a function of the county is roads. See S.C. Code Ann. § 4-9-30(5)(a), supra. Therefore, a county council would have to contract with a municipal council in order to repair roads within the municipal limits.

Furthermore, the State Constitution allows political subdivisions to jointly administer functions and exercise powers. Article VIII, section 13 of the S.C. Constitution provides:

> (A)Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.
>
> (B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political

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statutes should be harmonized if possible. However to the extent of any conflict between the two, the special [sic] statute usually prevails").

> subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State. . . .

S.C. Const. art. VIII, § 13.

In our 1988 opinion, we concluded, regarding Article VIII, section 13, that:

> [c]learly, by these provisions, counties and municipal corporations may agree to jointly administer services or exercise powers. By reasonable implication, a county could not exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county's exercise of power.

Op. S.C. Atty. Gen., February 25, 1988, supra.

CONCLUSION

Our opinion is that the municipality, and not the county, is responsible for the maintenance and repair of the roads located inside its corporate limits. We believe that county councils are only responsible for repairing roads which are in unincorporated areas of the county. As section 5-27-120 clearly and specifically directs municipal councils to "repair all the streets, ways and bridges within the limits of the city or town," we believe it is irrelevant what political subdivision built or traditionally maintained the streets.

Sincerely,

Elinor V. Lister

Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

COUNTY COUNCIL OF BEAUFORT COUNTY
FINANCE DEPARTMENT
Post Office Drawer 1228
Beaufort, South Carolina 29901-1228
Phone (843) 255-2297 Fax (843) 255-9422

TO: Councilman Jerry Stewart, Chairman, Finance Committee

CC: Gary Kubic, County Administrator
Josh Gruber, Deputy County Administrator

FROM: Alicia Holland, CPA, CGMA, Chief Financial Officer

DATE: January 5, 2017

SUBJECT: Technical College of the Lowcountry, 2006 General Obligation Bond
2013C General Obligation Bond (Refunded 68.29% of the 2006 General Obligation Bond)

In November 2006, Beaufort County issued a 20-year, $17.5 million General Obligation Bond for various County projects. This bond had varying interest rates ranging from 3.5% to 8.0%. $1.5 million of this bond was provided to the Technical College of the Lowcountry (TCL) for purposes of funding its southern campus.

Based on the payment history beginning in January 2007 through September 2016, it appears TCL has been paying Beaufort County for its share of debt service related to the $1.5 million portion of the 2006 General Obligation Bond issued in November 2006. During this time period, TCL has paid a total of $1,067,655 for principal and interest. This is an average fiscal year payment of $106,766 (10 year time period). Based on this information, it appears that TCL was provided a payment/amortization schedule based on $1.5 million for 20 years at a 4.21% interest rate.

In May 2013, the County refunded 68.29% of the 2006 General Obligation Bond. These refunding bonds are known as the County's 2013C General Obligation Bonds and have varying interest rates ranging from 1.5% to 5.0%. The True Interest Cost (TIC) per the 2013C bond documents is 2.02%. The Technical College of the Lowcountry (TCL) has continued to make debt service payments to the County based on the original payment schedule.

Based on the original payment/amortization schedule TCL was to pay $1.5 million of principal and $749,092 of interest over the 20 year life of the 2006 General Obligation Bond. When the 2013C General Obligation Bonds were issued in May 2013, if TCL would have been provided an updated payment/amortization schedule the total interest paid over the 20 year term would have been revised to $602,854, with the $1.5 million principal remaining the same. Since TCL continued to pay debt service to the County from May 2013 through September 2016 per the original schedule (the next scheduled payment is due March 1, 2017), it appears TCL paid additional principal during this time related to the interest cost difference of the refunding bond debt service.

As of June 30, 2016, the principal balance reflected for TCL's Note Receivable in the County's Comprehensive Annual Financial Report is $964,286. Therefore additional principal payments are calculated as $75,747 beginning May 2013 through September 2016, resulting in the principal balance of $888,539 instead of $964,286, as of the date of this report.

If a revised debt schedule, based on the preceding information, were to be provided to TCL as of the date of this memo, it would look like the table below.

						$ 888,538.81
PYMT DATE		**INTEREST**	**PRINCIPAL**	**TOTAL PYMT**		**PRINCIPAL BALANCE**
3/1/2017		$ 24,118.93	$ 78,604.86	$ 102,723.79		$ 809,933.95
3/1/2018		$ 22,022.16	$ 80,701.64	$ 102,723.79		$ 729,232.31
3/1/2019		$ 19,861.60	$ 82,862.19	$ 102,723.79		$ 646,370.12
3/1/2020		$ 17,635.07	$ 85,088.73	$ 102,723.79		$ 561,281.39
3/1/2021		$ 15,340.29	$ 87,383.50	$ 102,723.79		$ 473,897.89
3/1/2022		$ 12,974.91	$ 89,748.88	$ 102,723.79		$ 384,149.01
3/1/2023		$ 10,536.48	$ 92,187.31	$ 102,723.79		$ 291,961.70
3/1/2024		$ 8,022.46	$ 94,701.33	$ 102,723.79		$ 197,260.36
3/1/2025		$ 5,430.21	$ 97,293.58	$ 102,723.79		$ 99,966.79
3/1/2026		$ 2,757.01	$ 99,966.79	$ 102,723.79		$ (0.00)
		$138,699.11	**$888,538.81**	**$1,027,237.92**		