

McKOOON LAW FIRM

ATTORNEY AT LAW

POST OFFICE BOX 2565
COLUMBUS, GEORGIA 31902
(706) 324-4375

STREET ADDRESS:

3 BRADLEY PARK COURT, SUITE D
COLUMBUS, GEORGIA 31904

FAX NUMBER:

(706) 322-9535

JOSHUA R. MCKOON **
E-Mail - JRMckoon@aol.com

** LICENSED IN ALABAMA AND GEORGIA

December 12, 2018

Chairman Mike Boyce
Cobb County Board of Commissioners
100 Cherokee Street
Marietta, Georgia 30090

Re: Ante Litem Notice

Dear Commission Chairman Boyce:

This Firm represents Cobb County residents and taxpayers Jan Barton and Debbie Fisher and six additional residents/taxpayers who wish to remain anonymous and is sending this letter on their behalf. This letter serves as the statutory ante litem notice required by O.C.G.A. 36-11-1 prior to commencing litigation against a County government.

First, Cobb County is violating O.C.G.A. 48-8-121 and O.C.G.A. 48-8-122 by not providing the proper accounting for Special Purpose Local Option Sales Tax (SPLOST) revenues raised pursuant to the three SPLOST funds that are still being drawn on by the Cobb County government. Specifically, the reports issued by Cobb County do not include description of the projects containing the details set forth in the ballot upon which they were approved, a statement of what corrective action the local government intends to implement with respect to projects behind schedule or underfunded, and a statement of surplus funds which have not been expended for a project or purpose. Cobb County has not acknowledged the surplus which exists after counting funds remaining to be expended on properly authorized SPLOST purposes.

Second, Cobb County has added projects that were not included or authorized by voters as part of any SPLOST referendum which Cobb County is currently drawing down on in violation of Georgia law. These include the unauthorized segments of the Bob Callan Trail, 1994 TIP Projects as well as the 3rd Army Road

project. For your convenience I have attached a spreadsheet indicating the projects that my clients contend were not authorized by Cobb County voters in any SPLOST referendum. Georgia law is very clear on what purposes, other than the specified purposes in the SPLOST resolution and referendum, are authorized for SPLOST funds after the expenditures on the SPLOST list have been exhausted. The purposes allowed for surplus funds include reducing general obligation bond debt or using funds to reduce property taxes either as an offset or expending the funds on items that would be required to be funded with property taxes. O.C.G.A. 48-8-121(a)

My clients are merely asking for two things from Cobb County. First, they want the County to issue a definitive accounting for all remaining SPLOST revenues that is in compliance with Georgia law that will clearly delineate which SPLOST funds are being used to fund authorized SPLOST purposes to include the return of funds expended on unauthorized projects and which SPLOST funds are excess funds. Second, once the excess funds are identified through the proper accounting they are asking Cobb County to expend those funds on remaining legally authorized projects or declare the projects infeasible, to pay general obligation indebtedness or reduce property taxes. They do not want to engage in legal action that will cost additional taxpayer dollars. They have spent months working with elected officials and Commission staff to try to get their questions answered and thus far have been unable to secure these two objectives, necessitating this letter. They are still willing at this time to work with County government to get these issues resolved.

To the extent the County is under the impression these residents and taxpayers do not have standing to raise these issues in an action seeking injunctive and other relief in Cobb County Superior Court, the Georgia Supreme Court has made it clear where there is an allegation of ultra vires action by local government with respect to SPLOST proceeds that allegation is sufficient to establish standing in a taxpayer suit.

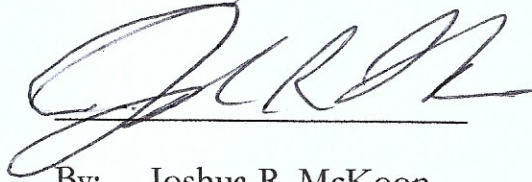
In Rothschild v. Columbus Consolidated Government, 678 S.E.2d 76 (Ga. 2009), the Georgia Supreme Court held that:

In these SPLOST cases, this Court has held that mandamus will issue when the petitioners show that the public officials have failed to comply with a clear legal duty or grossly abused their discretion, such as by abandoning a SPLOST purpose approved by voters when it remains feasible to complete the purpose. None of these prior SPLOST cases required the plaintiffs to prove the merits of their claim that government officials were improperly abandoning a SPLOST purpose in order to establish standing.

So, on behalf of my clients, I respectfully request the Cobb County Commission respond to this letter no later than January 12, 2019 so we may avoid further legal action to resolve this matter. My clients are willing to meet with Commission staff or other personnel to try and resolve these questions without taking further legal action. I look forward to your response on or before January 12, 2019.

Respectfully Submitted,

MCKOON LAW FIRM

A handwritten signature in black ink, appearing to read 'JRM', written over a horizontal line.

By: Joshua R. McKoon

Mjr Prog Cd	Prog Cd	Phase Cd	Project Name	Curr Bud Am	Acrd Exp	An Cash	Exp At
7502	D2820	A	CIRCLE 75 PARKWAY DRAINAGE/CULVERT IMPROVEMENTS	334	0	0	334
7503	D3040	O	AUSTELL ROAD @ PAT MELL ROAD	501,914	0	0	501,914
7503	D3220	A	JOHNSON FERRY ROAD @ SEWELL MILL ROAD/PINE ROAD	68	0	0	68
7503	D3250	O	MARS HILL ROAD	628,415	0	0	628,415
7503	D3340	A	POWDER SPRINGS RD @ CHEATHAM HILL RD/CALLAWAY RD (CO-323)	26	0	0	26
7504	D4090	A	COBB PARKWAY (CO-231)	43	0	0	43
7504	D4180	U	SR280/SOUTH COBB DRIVE (CO-175A & CO-394)	500,000	0	0	0
7504	D4260	A	I-75 AT THIRD ARMY ROAD INTERCHANGE (CO-404)	5,000	0	0	825
7504	D4260	R	I-75 AT THIRD ARMY ROAD INTERCHANGE (CO-404)	1,495,000	0	0	986
7505	D5040	M	TRAFFIC CONTROL CENTER UPGRADE	217,626	0	0	217,626
7505	D5090	P	ATMS, PHASE 5, TCC (CO-333)	19,918	0	0	19,918
7506	D6040	A	BELLS FERRY ROAD	5,000	0	0	706
7506	D6160	A	NANCE ROAD (CO-302)	26	0	0	26
7506	D6250	A	WEST SANDTOWN ROAD	457	0	0	160
7507	D7260	A	HURT ROAD SIDEWALK	160	0	0	160
7507	D7280	C	BIG SHANTY ROAD SIDEWALK	937,314	0	0	0
7507	D7280	R	BIG SHANTY ROAD SIDEWALK	165,000	0	0	5,212
7508	D8180	A	POPE HIGH SCHOOL - HEMBREE ROAD	26	0	0	26
7508	D8180	C	POPE HIGH SCHOOL - HEMBREE ROAD	3,024,963	0	0	2,697,201
7508	D8180	E	POPE HIGH SCHOOL - HEMBREE ROAD	711	0	0	711
7508	D8180	O	POPE HIGH SCHOOL - HEMBREE ROAD	5,016	0	0	5,016
7508	D8180	R	POPE HIGH SCHOOL - HEMBREE ROAD	3,125	0	0	701
7508	D8180	U	POPE HIGH SCHOOL - HEMBREE ROAD	114,585	0	0	36,129
7509	D9140	C	RESURFACING 2009-3	1,703,493	0	0	1,703,493
7509	D9150	C	RESURFACING 2009-4	1,689,255	0	0	1,689,255
7511	D11J0	A	FLOYD ROAD TRAIL, PHASE 2	6,617	0	0	153
7511	D11J0	C	FLOYD ROAD TRAIL, PHASE 2	651,418	0	0	478,917
7511	D11J0	E	FLOYD ROAD TRAIL, PHASE 2	184,704	0	0	183,982
7511	D11J0	R	FLOYD ROAD TRAIL, PHASE 2	172,572	0	0	172,572
7511	D11J0	U	FLOYD ROAD TRAIL, PHASE 2	119,335	0	0	68,319
7511	D11K0	C	AL BISHOP DRIVE TRAIL	245,283	0	0	245,283
7511	D11L0	A	BOB CALLAN TRUNK TRAIL, PHASE 2, SEGMENT A	5,000	0	0	2,897
7511	D11L0	C	BOB CALLAN TRUNK TRAIL, PHASE 2, SEGMENT A	6,248,888	0	0	3,450,729
7511	D11L0	E	BOB CALLAN TRUNK TRAIL, PHASE 2, SEGMENT A	5,000	0	0	914
7511	D11L0	R	BOB CALLAN TRUNK TRAIL, PHASE 2, SEGMENT A	500,000	0	0	5,784

7512	D12A0	A	1994 TIP COMPLETION - SHARED COST	5,000	0	170
7512	D12A0	C	1994 TIP COMPLETION - SHARED COST	127,790	0	127,790
7512	D12A0	E	1994 TIP COMPLETION - SHARED COST	311	0	311
7512	D12A0	M	1994 TIP COMPLETION - SHARED COST	0	0	0
7512	D12A0	R	1994 TIP COMPLETION - SHARED COST	306,793	0	56,792
7512	D12E0	A	POWERS FERRY ROAD	4,000	0	3,468
Total				19,600,185	0	12,307,030

Red Not on referendum - (Bob Callan added after SPLOST closed no such project 2013 annual report)

Yellow On Referendum - 3rd Army entirely different description on a tier 2 project . - Pope - Driveway improvements v

Enc Am	Unexp Cash	Unexp Acrd	Adpt Am	Aloc Am	Amnd Am	Orig Bud	Air	Penc Am	Ucomit Am	Uoblig Am
0	0	0	0	0	0	334	0	0	0	0
0	0	0	0	0	501,914	0	0	0	0	0
0	0	0	0	0	68	0	0	0	0	0
0	0	0	0	0	628,415	0	0	0	0	0
0	0	0	0	0	26	0	0	0	0	0
0	0	0	0	0	43	0	0	0	0	0
0	500,000	500,000	0	0	500,000	0	0	0	500,000	500,000
0	4,176	4,176	0	0	5,000	0	0	0	4,176	4,176
0	1,494,014	1,494,014	0	0	1,495,000	0	0	0	1,494,014	1,494,014
0	0	0	0	0	217,626	0	0	0	0	0
0	0	0	0	0	19,918	0	0	0	0	0
0	4,294	4,294	0	0	5,000	0	0	0	4,294	4,294
0	0	0	0	0	26	0	0	0	0	0
0	297	297	0	0	457	0	0	0	297	297
0	0	0	0	0	160	0	0	0	0	0
0	937,314	937,314	0	0	937,314	0	0	0	937,314	937,314
0	159,788	159,788	0	0	165,000	0	0	0	159,788	159,788
0	0	0	0	0	26	0	0	0	0	0
0	327,762	327,762	344,650	0	2,680,313	344,650	0	0	327,762	327,762
0	0	0	18,000	0	-17,289	18,000	0	0	0	0
0	0	0	0	0	5,016	0	0	0	0	0
0	2,424	2,424	150,000	0	-146,875	150,000	0	0	2,424	2,424
78,456	78,456	78,456	5,000	0	109,585	5,000	0	0	0	0
0	0	0	0	0	1,703,493	0	0	0	0	0
0	0	0	0	0	1,689,255	0	0	0	0	0
0	6,464	6,464	0	0	6,617	0	0	0	6,464	6,464
0	172,500	172,500	0	0	651,418	0	0	0	172,500	172,500
723	723	723	0	0	184,704	0	0	0	0	0
0	0	0	0	0	172,572	0	0	0	0	0
51,016	51,016	51,016	0	0	119,335	0	0	0	0	0
0	0	0	0	0	245,283	0	0	0	0	0
0	2,103	2,103	0	0	5,000	0	0	0	2,103	2,103
2,798,159	2,798,159	2,798,159	0	0	6,248,888	0	0	0	0	0
0	4,086	4,086	0	0	5,000	0	0	0	4,086	4,086
0	494,216	494,216	0	0	500,000	0	0	0	494,216	494,216

0	4,830	4,830	0	0	0	5,000	0	0	0	4,830	4,830
0	0	0	54,766	0	0	73,024	54,766	0	0	0	0
0	0	0	311	0	0	0	311	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	250,000	250,000	442,865	0	0	-136,073	442,865	0	0	250,000	250,000
0	532	532	0	0	0	4,000	0	0	0	532	532
2,928,355	7,293,154	7,293,154	1,015,592	0	0	18,584,592	1,015,592	0	0	4,364,800	4,364,800