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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 12, 2000

Susan S. Quinn, Assistant Chief Counsel
South Carolina Department of Natural Resources
Post Office Box 167
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Ms. Quinn:

By your letter of November 22, 2000, you have requested an opinion of this Office concerning the Salem Watershed Conservation District (District) in Florence County. You inform us that the District has completed as much of its infrastructure work as possible. Certain parcels of land originally conceived to be part of the District will not benefit from it, and as a result, may wish to detach. You have several questions regarding procedural and taxation issues, each of which I will answer in turn.

Question 1

Who is required to make a declaration that the work on the Salem Watershed Conservation District is final and complete, and what is the proper procedure for making this declaration?

The creation and function of watershed conservation districts are delineated in the provisions of South Carolina Code Section 48-11-10, et seq. A review of those provisions reveals no requirement that the newly formed watershed conservation district make a declaration that construction of the district is final and complete. Thus, no particular statutes govern the procedure for making such a declaration. However, should the District elect to make the declaration, the appropriate authority lies with the board of directors of the District to act as a corporate body. See S.C. CODE ANN. § 48-11-110. Thus, the board of directors could formally express by resolution that the work on the watershed district is final and complete.

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Question 2

Since the Salem Watershed Conservation District's boundaries as now constructed include parcels of land which will receive no benefit from the watershed conservation district, what is the proper procedure for the non-benefitting property owners to detach from the Salem Watershed Conservation District?

Fortunately, S.C. Code Ann. § 48-11-180 directly addresses this scenario. That provision states:

The owner of lands which have not and cannot be benefited by their inclusion in the watershed conservation district may petition the commissioners of the soil and water conservation district to have the lands detached. The petition must describe the lands and state the reasons why they should be detached. A hearing must be held by the commissioners within thirty days after the petition is filed. Due notice of the hearing must be given by the commissioners. If it is determined by the commissioners that the lands must be detached, the determination must be certified to the county auditors of the counties involved for recording.

Thus, as outlined in the statute, the landowner must petition the commissioners of the soil and water conservation district (*not* the board of directors of the watershed conservation district), a hearing must be held, the commissioners must make a determination that the land should be detached, and the decision must be certified to the county auditor.

Question 3

What is the proper procedure for the Salem Watershed Conservation District to redefine its boundaries as constructed without including the non-benefitting parcels of property?

Because you have inquired separately about the procedure for detachment, I will assume from this question that you are referring to circumstances in which individual landowners have not petitioned for detachment, but the District wishes, of its own volition, to redefine its boundaries to exclude non-benefitting land. This question is a bit more complex. The statutes governing the formation of watershed conservation districts contemplate changing the boundaries of the district only in limited circumstances. In addition to § 48-11-180 above, which allows the boundaries to be modified when a landowner detaches, the boundaries also may be changed when land is annexed into the district under § 48-11-170, when two or more districts are consolidated under § 48-11-185, or when the district is discontinued entirely under § 48-11-190. The governing statutes do not appear to apply to a situation in which the boundaries of a watershed district are modified to exclude non-benefitting land, absent a petition from the landowner to detach from the watershed district.

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Furthermore, judging from the distribution of authority in these provisions, determining exactly how a governing body could redefine the boundaries in these circumstances is problematic. To illustrate: when individual land is to be annexed into or detached from the district, the interested landowners must petition the commissioners of the *soil and water conservation district* in which the watershed district lies. A higher governing body, so to speak, makes the determination of whether individual parcels of land may be added to or detached from the district. See S.C. CODE ANN. §§ 48-11-170, 48-11-180. When greater modifications are made to the boundaries of the district, either by consolidation or discontinuation, approval must be obtained by referendum from a majority of all interested landowners. See S.C. CODE ANN. §§ 48-11-185, 48-11-190.

The situation in which the district seeks to redefine the boundaries to exclude all non-benefitting land seems to fall somewhere in between the individual petitioning landowner and the consolidation or discontinuation of the district. The governing statutes make no provision for these circumstances, and I am reluctant to infer a procedure for such a modification when other allowable circumstances for modification are so clearly delineated. Indeed, a long standing tenant of statutory interpretation states that the enumeration of particular things in a statute excludes the idea of something else not mentioned. Pennsylvania Natl. Mutual Casualty Ins. Co. v. Parker, 282 S. C. 546, 320 S.E.2d 458 (1984) ["expressio unius est exclusio alterius"]. Thus, I cannot opine with any high degree of confidence that a procedure exists for modification of the boundaries of a watershed conservation district to exclude non-benefitting lands when no petition for detachment has been made.

Of course, I recognize that this is an unsettled area of law in South Carolina. To determine the matter with some finality, you may wish to seek either a declaratory judgement by the courts or legislative clarification of the statutes.

Question 4

For a number of years, the non-benefitting property owners have paid taxes for inclusion into the Salem Watershed Conservation District. Since they have not and will not likely in the future, benefit from the Salem Watershed Conservation District, are they entitled to a refund? If so, what is the proper procedure for providing for this?

Again, because you have inquired separately about the procedures for detachment, I will assume from this question that you ask about property owners who have not yet detached from the watershed conservation district.

The board of directors, through the county auditors and treasurers, are authorized to levy a tax "on real property in the watershed conservation district" in an amount sufficient to meet the district's budget. S.C. CODE ANN. § 48-11-140. The language of the statute does not exclude from

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taxation property of those persons who do not receive benefits from the District. In an earlier opinion of this Office, dated Jan. 22, 1986 and enclosed herewith, it was concluded:

Based on the foregoing prior opinions and decisions of the South Carolina and United States Supreme Courts, a special purpose district such as Liberty-Chesnee-Fingerville Water District, as authorized by the General Assembly, has the power to assess, levy, and collect a tax uniformly imposed upon all taxable property located within the district, without regard to benefits received, absent an abuse of power or purely arbitrary action by the General Assembly, which would be determined only by a court of competent jurisdiction.

This opinion remains consistent with the provisions of S.C. Code Ann. § 48-11-140 and has not been superceded by any significant statutory amendments or case law. Thus, the conclusion of Op. Atty. Gen. Jan. 22, 1986, that generally property owners cannot escape tax liability solely because they will not receive direct benefits, continues to be the opinion of this Office.

As was also noted in Op. Atty. Gen. Jan. 22, 1986, although the district may levy the tax even though the property does not receive a benefit, the property owner may be entitled to relief. Chapter 60 of Title 12 of the South Carolina Code provides for procedures for refunds of property taxes. The property owners should consult attorneys, however, to advise them of the necessary steps to take in their individual private legal disputes. This opinion does not comment on the likelihood that relief from the tax would be granted in any particular circumstance.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General