



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
 ATTORNEY GENERAL

September 24, 1999

The Honorable Vida O. Miller
 Member, House of Representatives
 P. O. B box 3157
 Pawleys Island, South Carolina 29585

RE: Informal Opinion

Dear Representative Miller:

Your opinion request has been forwarded to me for reply. One of your constituents has questioned the constitutionality of Act No. 733 of 1967. This Act created the Georgetown County Water and Sewer District (hereinafter the "District") and provided that members of the governing body of the District are to be appointed by the Governor upon the recommendation of the Legislative Delegation of Georgetown County. Your constituent believes the general law on special purpose districts controls the selection of members of the governing body and, therefore, pursuant to S.C. Code Ann. § 6-11-60, members must be elected by the resident electors of the District.

The constitutionality of Act No. 733 was tested in Hagley Homeowners Association, Inc. v. Hagley Water, Sewer, and Fire Association, 326 S.C. 67, 485 S.E.2d 92 (1997). In Hagley, appellants argued the trial judge erred by determining creation of the District by Act No. 733 did not constitute special legislation in contravention of the State Constitution. They further argued that no compelling reasons justified the creation of the District by special law. The State Supreme Court disagreed with appellants' arguments and found:

In relevant part, S.C. Constitution art. III, § 34(IX) provides: "where a general law can be made applicable, no special law shall be enacted ...". South Carolina Code Ann. §§ 6-11-10 to -1260 (1977) provide the method by which special purpose districts may be established by petition of the affected landowners. Former versions of §§ 6-11-10 to -1260 existed at the time the General Assembly promulgated the Act creating the District. Sections 6-11-10 to -1260 and its

predecessors constitute general law. *Town of Hilton Head v. Morris*, 324 S.C. 30, 34, 484 S.E.2d 104, 107 (1997) (a general law is one which applies to the entire State and operates wherever the specified conduct takes place).

For decades this Court has recognized the right of the General Assembly to create special purpose districts without regard to the prohibition of S.C. Constitution art. III, § 34(IX). *Distin v. Bolding*, 240 S.C. 545, 126 S.E.2d 649, 653 (1962), citing *Mills Mill v. Hawkins*, 232 S.C. 515, 103 S.E.2d 14 (1957). Even special purpose districts which were primarily concerned with "mere conveniences or other matters not so vital to the public welfare" or for which "there was no real necessity for a special act" have been upheld by numerous decisions of the Court. [footnote omitted] *Mills Mill*, 232 S.C. at 524, 527, 103 S.E.2d at 17, 19, citing cases therein.

We conclude, although it is special legislation, the Act did not contravene the constitutional prohibition against special legislation. *Distin, supra; Mills Mill, supra*. Furthermore, we view the functions and powers of the District stated in the Act as sufficient evidence of need for the District's creation. *Rutledge v. Greater Greenville Sewer Dist.*, 139 S.C. 188, 193, 137 S.E. 597, 598 (1927) ("Every presumption must be indulged in favor of the constitutionality of a legislative act. Courts should not declare a statute unconstitutional unless the invalidity is "manifest beyond a reasonable doubt").

Appellants also argued that the trial court erred by determining the imposition of monthly charges and front-foot assessments to cover the construction costs of the project by the District do not constitute taxation without representation in violation of the State Constitution. The court cited the provision found in Act No. 733 requiring the appointment of members of the governing body and found legislative delegation of authority to impose charges and assessments to such a body does not run afoul of the prohibition against taxation without representation. Therefore, the imposition of charges and assessments by the District does not violate the State Constitution.

Although the court did not specifically state the appointment provisions of Act No. 733 control over the election provisions of S.C. Code Ann. § 6-11-60, this inference can be drawn from the court's decision. The court upheld the validity of the Act and found that this special legislation properly governs the District. In reaching this decision, the court recognized the governing body of the District is appointed by the Governor upon the recommendation of the Legislative Delegation of Georgetown County. The court also

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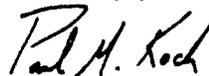
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acknowledged the District's appointed governing body possessed the power to impose charges and assessments. Therefore, in light of the court's decision, I believe that the appointment provisions found Act No. 733 provide the proper method of selection for members of the District's governing body.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General