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The State of South Carolina



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August 26, 1994

The Honorable G. Ralph Davenport, Jr.
Member, House of Representatives
105 Ashland Terrace
Spartanburg, South Carolina 29303

Dear Representative Davenport:

You provided to this Office a copy of a memorandum from the County of Spartanburg regarding the selection of a new County Fire Marshal. You have asked how the selection of the new fire marshal will affect existing special purpose districts.

The memorandum of February 2, 1994 from the Deputy County Administrator of Spartanburg County announced that an individual has been selected to be the new County Fire Marshal. The memorandum provided in relevant part:

The position of Fire Marshal was created by County Council in the Fiscal Year 1994 budget. The purpose of the position is to provide assistance and direction to Spartanburg County fire departments. The Fire Marshal will be able to provide guidance to the County Administrator's office and County Council on matters relating to fire service and will also work very closely with the Spartanburg County Fire Prevention and Protection Advisory Committee in the development of a Master Plan for Fire Service in Spartanburg County.

It is our understanding that Spartanburg County has a large number of special purpose districts created by acts of the General Assembly before the advent of home rule to provide fire protection services. We further understand that Spartanburg County has a county-wide fire protection plan in place, pursuant to S.C. Code Ann. § 4-19-10 et seq., and that several special purpose districts provide fire services under this plan by contract.

Robert Litter

Article VIII, § 1 of the State Constitution provides:

The powers possessed by all counties, cities, towns, and other political subdivisions¹ at the effective date of this Constitution shall continue until changed in a manner provided by law.

Article VIII is commonly referred to as the "home rule" portion of the Constitution, and it became effective on March 7, 1973, upon ratification by the General Assembly after a favorable referendum vote in the November 1972 general election. Then, as the Home Rule Act (Act No. 283 of 1975) was enacted, § 4-9-80 was adopted to provide in relevant part:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever named designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly,

For the special purpose districts in existence at the advent of home rule and providing fire services at that time, it is our opinion that the districts would continue to exercise the powers being exercised as of March 7, 1973, when Article VIII was ratified by the General Assembly, particularly since § 4-9-80 states that the Home Rule Act does not devolve any additional powers upon county councils with respect to special purpose districts. Thus, the appointment of a County Fire Marshal for Spartanburg County would have no effect on the internal operations or day-to-day business of the special purpose districts.

I must caution, however, that Spartanburg County Council has the potential to be involved in some aspects of the special purpose districts' operations. As examples, if bonds are being issued, temporary increases in millage are being sought, or boundaries

¹ A special purpose district is considered to be a political subdivision.

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of special purpose districts are being enlarged or diminished, county council, by statute, has been granted certain authority or responsibility by the General Assembly to help the special purpose districts accomplish these acts. Too, if a special purpose district has entered into a contract to provide fire services under the county fire protection plan, it is possible that by agreement the county may have some impact on special purpose districts.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions