

4902/5611



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

April 19, 1995

Jerry A. Miller  
Executive Director  
Irmo Chapin Recreation Commission  
200 Leisure Lane  
Columbia, South Carolina 29210

RE: Informal Opinion

Dear Mr. Miller:

By your letter of April 10, 1995, to Attorney General Condon, you have requested an opinion as to three questions concerning the alteration of boundaries of a special purpose district or the merger of special purpose districts. You advised that the Irmo Chapin Recreation Commission is a special purpose district created by Act No. 329 of 1969 by the General Assembly. Two years ago the Commission was advised by its bond attorney in preparing general obligation bonds:

The District is one of two recreation districts in Lexington County and is governed primarily by its Commission. The Lexington County Council has authority over the District to approve any changes in millage, to approve the issuance of general obligation bonds and, under certain circumstances, may alter the boundaries of the District or cause its merger or consolidation with any other District. Although the District was created by an act of the General Assembly of the State of South Carolina, by virtue of the ratification of Home Rule provisions to the Constitution of the State of South Carolina, the General Assembly no longer has the power to enact special legislation that would affect the District or the Commission but may only enact general law.

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Based on that advice, you have raised three questions, each of which will be examined separately, as follows.

Question 1

Under what specific "certain circumstances" may the County Council alter boundaries of the District or cause its merger?

A county council is given the authority pursuant to S.C. Code Ann. §6-11-410 et seq. to enlarge, diminish, or consolidate any existing special purpose districts located within such county. §6-11-420. The definition of "special purpose district" to which these powers apply is found in §6-11-410 (a): "Special purpose district" shall mean any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local governmental function."

Without having seen bond counsel's document or discussed the matter with counsel,<sup>1</sup> I am not certain what the specific "certain circumstances" would be, other than in relation to the statutory procedures. For example, §6-11-430 provides that;

Each county board may, on its own motion, and shall, upon the petition of the commissions of the special purpose districts to be affected, take the action authorized by this article to enlarge, diminish or consolidate any special purpose districts lying within such county. In each such instance, by resolution duly adopted, the county board shall order a public hearing to be held for the purpose of making a determination as to whether and to what extent a special purpose district shall be enlarged, diminished or consolidated.

Thus, this statute provides two circumstances under which boundaries of a special purpose district could be altered or districts consolidated: one, on the motion of county council, which is discretionary; and two, on petition of the commission of the special purpose district, which action by county council is mandatory. As to specific factual circumstances which could trigger a county council or the commission of a special purpose district to take such action, such would be outside the scope of this informal opinion.

Question 2

What procedures would be required prior to carrying out such a merger?

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<sup>1</sup>It might be advisable to consult bond counsel as to exactly what was intended by his advice, or to resolve any other questions arising as a result of counsel's advice.

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I am enclosing a copy of the relevant statutes for your review. These may be summarized as follows.

1. A county council may receive a petition from the commission of a special purpose district requesting that the boundaries of the special purpose district be altered or that the district be consolidated with another district. Or, county council may undertake such alteration or consolidation on its own motion. §6-11-430.

2. County council adopts a resolution ordering that a public hearing be held for the purpose of determining whether and to what extent the boundaries should be altered or the district consolidated. §6-11-430.

3. The notice is to be published once weekly for three successive weeks in a newspaper of general circulation in the county. Section 6-11-440 enumerates the details which must be included within the notice. §6-11-440.

4. A public hearing is held. Proponents and opponents of the proposed action are to be given full opportunity to be heard. §6-11-450.

5. After the public hearing, county council adopts a resolution making a finding as to whether and to what extent the boundaries shall be altered or the district consolidated. If the finding is affirmative, the resolution shall redefine the boundaries of the special purpose district in such a fashion as to make possible appropriate entries in the records of the county auditor and county treasurer to reflect the boundaries as reconstituted. §6-11-460.

6. After adoption of the resolution, county council is to publish notice of its action once weekly for two successive weeks in a newspaper of general circulation in the county. Section 6-11-470 provides the details which are to be published. §6-11-470.

7. Any person affected by the actions of county council in this process may institute a lawsuit in the Court of Common Pleas in the county in which these actions are taking place. Such must be instituted within twenty days following the last publication of the notice prescribed by §6-11-470. §6-11-480.

### Question 3

Would residents of the Irmo Chapin Recreation District have the opportunity to vote on this matter relative to any alteration of boundary or merger?

Based on the statutes described above and enclosed herewith, there does not appear to be a statutory requirement that residents of the affected district be afforded the opportunity to vote on the matter relative to any alteration of boundary or merger.

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. I trust that

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it satisfactorily responds to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

Enclosure