

The State of South Carolina



Office of the Attorney General

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April 1, 1993

The Honorable D. N. Holt, Jr.
Chairman, Charleston County Legislative Delegation
2 Courthouse Square, Room 307
Charleston, South Carolina 29401

The Honorable Ronald C. Fulmer
Member, House of Representatives
320-C Blatt Building
Columbia, South Carolina 29211

The Honorable Robert A. Barber, Jr.
Member, House of Representatives
217 Blatt Building
Columbia, South Carolina 29211

Gentlemen:

Several legislators have inquired of this Office about the status of the James Island Public Service District since the incorporation of the new Town of James Island. Specifically, because two positions on the District's governing body have been or will be vacated because the incumbents have been elected to the new Town Council, you have questioned where the replacements for those District members must reside: within the Town of James Island or within the District? The position of the remaining members of the District who reside in the new town is also questioned.

The James Island Public Service District was established by the General Assembly by Act No. 498 of 1961 to provide sewer service, fire protection, garbage disposal, and street lighting for the specified area of James Island. The boundaries of the District were described in § 1 of Act No. 498 of 1961.

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A referendum was held on December 1, 1992 on the question of incorporating a portion of James Island into the proposed Town of James Island. The referendum was successful, though we understand that the incorporation is being challenged in court. No information has been presented to this Office which indicates that the District's boundaries have been diminished by this incorporation referendum or by any other legal means which might be used to diminish the boundaries of a special purpose district.

Article VIII, § 1 of the State Constitution provides that "[t]he powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." (Emphasis added.) The James Island Public Service District would be considered a political subdivision and thus would be entitled to the protection of Article VIII, § 1, continuing to exist as it did on March 7, 1973 "until changed in a manner provided by law." See Ops. Atty. Gen. dated March 8, 1988; November 10, 1972; and November 16, 1966; by analogy, see City of Abbeville v. Aiken Electric Cooperative, Inc., 287 S.C. 361, 338 S.E.2d 831 (1985). Thus, even with the incorporation of the Town of James Island, we are of the opinion that the James Island Public Service District continues to exist as it did prior to the incorporation, with its boundaries and service area undiminished, until its boundaries and/or services are changed by a manner provided by law.

With that background in mind, the provisions for filling vacancies on the District's governing body must be examined. Act No. 1367 of 1974, in § 1, provides that "[a]ny vacancy shall be filled for the unexpired portion of the term by appointment by the Governor upon the recommendation of a majority of the Charleston County Legislative Delegation." Within that same section, it is provided that "[t]he commission shall consist of seven members, all of whom may reside anywhere within the District." Because, in our view, the boundaries of the District remain unchanged due to the incorporation of the Town of James Island, we are of the opinion that replacement appointments may be made of anyone (otherwise qualified) who resides anywhere within the District, whether that be within or outside the Town of James Island. The two appointees may reside within the Town limits, as may present District commissioners, as long as they reside also within the District.

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

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With kindest regards, I am

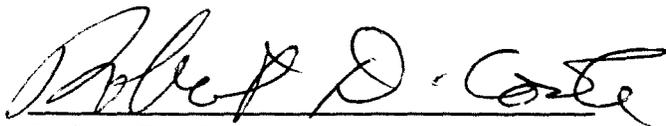
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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cc: David Swanson, Esquire
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