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# The State of South Carolina



## Office of the Attorney General

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March 5, 1990

The Honorable Paul E. Short, Jr.  
Majority Leader  
House of Representatives  
320-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Short:

You have provided this Office a map and proposed legislation which would create an entity to be known as the Richburg Fire District, which would provide fire protection services to that area of Chester County outlined on the map. You have asked what procedure could be followed to create the district.

At the outset, it is noted that at least two entities have been established by the General Assembly to provide fire protection services in Chester County. The Board of Fire Control for Chester County was established pursuant to Act No. 892 of 1966, as amended by Act No. 600 of 1967 and Act No. 1259 of 1974; its mission is to provide a comprehensive plan of fire control for Chester County. In addition, Chester Fire District was created by Act No. 1779 of 1972 to provide fire protection services for a specified area lying within a radius of three miles measured from the center of the City of Chester. The proposed district would not be affected by the Chester Fire District, but its relationship to the Board of Fire Control must be examined.

The Board of Fire Control was mandated, by sections 3 and 5 of Act No. 892 of 1966, to study fire control problems and develop a comprehensive plan to provide the necessary services. Considering the criteria enumerated and discussed in Op. Atty. Gen. No. 84-132 to determine whether an entity is a special purpose district, it is likely that the Board of Fire Control is more a county agency than a political subdivision such as a special purpose district. Thus, it is not likely that the service area of the Board of Fire Control would require amendment by Chester County Council following Section 6-11-410 et seq. of the South Carolina Code of Laws; it is noted

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that when the Chester Fire District was created by the General Assembly, the area served by the Board of Fire Control was not mentioned or diminished in that enabling legislation. Further, Chester County Council would have authority to modify the terms of the local acts relative to the Board of Fire Control, pursuant to section 3 of Act No. 283 of 1975 (the Home Rule Act), if modification be necessary.

With this background in mind, the methods by which a fire protection district may be established will be examined.

#### Section 6-11-10 et seq.

One method of creating an autonomous political subdivision to provide fire protection services would be pursuant to Section 6-1-10 et seq. of the Code, a copy of which is enclosed. This method would require a petition for formation of the district and a referendum, as outlined in the statutes; the statutes would grant more powers to the district's commission than those envisioned by the proposed legislation; additionally, the commissioners would be elected rather than appointed.

#### Section 4-9-30(5)

Another way to achieve the result of creating a fire district for the specified area of Chester County would be the establishment of a special tax district by Chester County Council acting pursuant to Section 4-9-30(5) of the Code, a copy of which is enclosed. Again, a petition for formation of the district would be required; whether a referendum would be required would depend upon the percent of the freeholders who sign the petition.

#### County-Wide Fire Service

Chester County Council could follow either of two methods to create a county-wide fire protection service: Section 4-19-10 et seq. or Section 4-21-10 et seq. Either one of these methods would not allow for the establishment of a district only for the Richburg area, however.

#### Act of the General Assembly

A final way by which such a district might be attempted would be by act of the General Assembly. The General Assembly's creation of the Aiken County Public Service Authority after the adoption of Article VIII of the State Constitution (the home rule article), as violative of Article VIII, Section 7 (prohibiting the adoption of laws for a specific county), was successfully challenged in Murphree v. Mottel, 267 S.C. 80, 226 S.E.2d 36 (1976). Other acts of the General Assembly relative to special purpose districts located in a single county have also been overturned as violative of

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Article VIII, Section 7. Torgerson v. Craver, 267 S.C. 558, 230 S.E. 2d 228 (1976); Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982); Cooper River Park & Playground Comm'n v. City of North Charleston, 273 S.C. 639, 259 S.E. 2d 107 (1979); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

Of course, an act of the General Assembly is presumed to be constitutional in all respects. Moreover, such an act would not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. This Office may only comment on potential constitutional problems, leaving the actual determination of unconstitutionality to the courts of this State. Whether to adopt an act creating the proposed fire district would be up to the General Assembly, of course; the potential constitutional difficulties are pointed out for your consideration.

#### Taxation Matters

Two matters within the proposed legislation should be examined and perhaps clarified in light of Article X of the State Constitution. References to establishing and levying the necessary tax millage are found in sections 3, 4, and 5 of the proposed legislation. Because the proposed governing body would be appointed, the action of Chester County Council (an elected body) with respect to levying taxes should be clarified. If the power to set tax millage should be given to an appointed body, such would likely conflict with Article X, Section 5 of the State Constitution, which prohibits taxation without representation. Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981). Another way to avoid a constitutional challenge would be to have an elected commission or governing body.

In addition, section 6 of the proposed legislation provides:

Notwithstanding any other provision of law, no property shall be exempt from a tax levy for fire purposes within the Lewisville-Richburg Fire District other than those eleemosynary properties exempted by specific statute [sic].

A similar provision is contained in Act No. 1779 of 1972 as to the Chester Fire District, it is noted. Article X, Section 3 of the State Constitution exempts other property from ad valorem taxation, as well as authorizing the General Assembly to provide other exemptions by general law of uniform applicability. Thus, it is possible that the proposed language quoted herein could be challenged as

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violative of Article X, Section 3 if taxes are attempted to be levied on property of political subdivisions used for public purposes and the other enumerated exempt entities.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise me if I may provide clarification or additional assistance. I am returning your map and proposed ordinance in the event the same are needed by your constituents.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nnw

Enclosures

REVIEWED AND APPROVED BY:

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