

# The State of South Carolina



## Office of the Attorney General

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February 22, 1990

The Honorable Ronald P. Townsend  
Member, House of Representatives  
436-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Townsend:

Thank you for your recent letter concerning the levying of millage for the Anderson County Fire Protection Commission. In researching our files of previously-issued opinions, I found one which, with additional comments, would be responsive to your inquiry. A copy of the opinion dated September 30, 1985, is enclosed for your review. Each of your questions will be addressed, as follows.

1. Under existing law, does the Anderson County Fire Protection Commission have power to increase millage for the Fire Commission without approval from the Anderson County Legislative Delegation?

The Commission was given authority by Act No. 146, 1969 Acts and Joint Resolutions, to annually levy a tax, not to exceed four mills, on all taxable property in Anderson County. The two methods of which we are aware, by which millage may be increased for the benefit of a special purpose district, are in Sections 6-11-273 and 6-11-275 of the South Carolina Code of Laws (1988 Cum. Supp.), as cited in the enclosed opinion. Certain actions by Anderson County Council would be required if one of these statutes should be followed, but no approval is required therein by the Anderson County Legislative Delegation. We can locate no other means by which the Fire Commission could increase the millage rate with or without approval from the Delegation.

2. Does the Fire Commission, being an appointed body by the Delegation, have power to increase millage without a referendum with the people?

As noted in the enclosed opinion, Section 6-11-275 provides a mechanism for a one-year increase in a millage limitation of a special purpose district by written approval of the county's governing

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body (county council). Following this mechanism, a referendum would not be required. Section 6-11-273 provides a procedure by which a referendum may be held to increase millage limitations on a basis other than one year at a time.

3. Must the Anderson County Delegation be the body to set tax millage for the Fire Commission without a referendum?

This question is answered in the enclosed opinion.

4. If Anderson County Fire Commission, being an appointed body, cannot set millage for themselves, does existing law need to be changed to allow them to do so?

This question is answered in part by the enclosed opinion. Further, an act which would permit an appointed body to have an unlimited power to set tax millage rates and cause taxes to be levied thereon would undoubtedly be found to be violative of 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). Any legislative enactment would be presumed to be constitutional unless and until a court should declare it unconstitutional, of course; we merely point out the risk of constitutional challenge should such an act be adopted.

I hope that the foregoing and the enclosures will sufficiently respond to your inquiry. If you have additional questions or require clarification, please do not hesitate to ask.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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