

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

January 10, 1991

B. Bayles Mack, Esquire
Mack & Mack
Post Office Box 128
Fort Mill, South Carolina 29715

Dear Mr. Mack:

You had requested an opinion from our Office on establishing a tax district for the Fort Mill Rescue Squad. You advised that the Rescue Squad operates within the corporate limits of Fort Mill as well as throughout the Fort Mill Township in York County. Further, you advised that the Rescue Squad renders ambulance services as a secondary responsibility but has a primary responsibility of saving human lives in the Fort Mill Township. The Rescue Squad wishes to acquire a special tax district status for funding purposes.

The powers granted to each county's governing body are enumerated in S.C. Code Ann. § 4-9-30 (1986). Subsection 5 provides in relevant part that county councils are authorized

to assess and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, ... public health; ... hospital and medical care; [Emphasis added.]

Then follow several procedures to be utilized in establishing a special tax district, one of which must be followed to create the

Mr. Mack
Page 2
January 10, 1991

district. 1/ As noted by Professor James L. Underwood in The Constitution of South Carolina: The Journey Toward Local Self-Government (U.S.C. Press 1989), "[s]pecial tax districts were a device by which higher taxes could be imposed on a particular area to pay for additional [governmental] services." Id., at 167.

Establishment of a special tax district for rescue squad purposes is not specifically authorized by § 4-9-30 (or by any other statute). Nor is it entirely clear that the operation of a rescue squad is a county purpose. Provision of ambulance services is recognized as a county function by § 4-21-10 et seq., but it may well be that the Rescue Squad performs certain functions which are not traditionally or usually considered to be county functions. Determination that the Rescue Squad performs a county function is a question of fact, beyond the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

Various statutes within the Code of Laws distinguish between rescue squads and county providers of emergency health services, as well. For example, § 44-7-2310 authorizes the governing body of a special purpose district, whose principal function is to furnish clinical medical services, to enter into contracts with "nonprofit providers of emergency health services or other health care, including specifically, but not limited to, ... rescue squads...." Section 44-51-450 authorizes counties, among others, to utilize rescue squads to give assistance, in the streets and other public places, to intoxicated persons. The Emergency Medical Services Advisory Council created pursuant to § 44-61-30(c) is to have three members who are members of rescue squads; three other members are to represent county emergency medical services. Section 44-61-40 requires licensure of services to transport patients by ambulance, including counties' provision of such services; as long as there is no conflict with ambulance service requirements in § 44-61-40, § 44-61-140 states that "presently operating rescue units" would not be prevented from using their existing equipment and performing functions then permitted. Clearly there is some similarity between rescue squads and agencies providing county emergency medical services, but the two are distinguished in statutes such as these.

1/ In the publication Guide to South Carolina County Government of the South Carolina Association of Counties, a comment following § 14-3703(5) of the 1962 Code of Laws, now numbered as § 4-9-30(5), noted that the procedures to establish special tax districts were based on the same requirements as for annexation of property to a municipality. The constitutionality of the municipal annexation statutes has recently been challenged and found to be lacking by the United States District Court in The Harbison Group v. Town of Irmo et al., C.A. No. 3:90-284-16; copies of the orders entered therein are enclosed for your information.

Mr. Mack
Page 3
January 10, 1991

The fact that the Fort Mill Rescue Squad is an eleemosynary corporation is of some concern. 2/ Revenues raised by taxation would presumably be channeled to the Rescue Squad for its operations (all of which may not be county purposes); whether this would amount to a use of public funds for a private organization, under the guise of a public venture, is a question to be considered. See Art. X, § 11 of the State Constitution. Would the Rescue Squad become a county agency or department, or would its identity as an eleemosynary corporation be retained? What measures of accountability would be adopted to ensure that tax dollars were being expended properly, i.e., election or appointment of an advisory or actual governing body, an annual audit, or the like? It is most doubtful that § 4-9-30(5) was intended to be a funding mechanism for eleemosynary corporations but was intended to fund the provision of governmental services. If the Rescue Squad surrendered its corporate charter, at least some of these problems might be overcome.

An overlap or duplication in services already being provided in York County is another concern. At least part of the proposed service area is already receiving ambulance services (and presumably being taxed therefor) by a contract entered into between Piedmont Medical Center and American Medical International, according to information supplied by the York County Attorney. Governmental services are thus already being provided; there is a potential for twice taxing those residents for the same services rendered by two separate entities. We know of no statutory authority which would permit a county to tax its citizens twice for exactly the same services.

A final concern is the fact that the proposed service area would include all of Fort Mill Township, including the City of Fort Mill but excluding the Town of Tega Cay, which has its own rescue squad. It is doubtful that a county could create a special tax district to include all or part of an incorporated municipality, where such is not in accord with § 4-9-30(5).

While the operation of a rescue squad is a worthy purpose, the specific legal question which you have posed is unique, and there are no judicial decisions from the courts of this State to which we can look for guidance. The foregoing conclusions of this Office appear to be consistent with advice given on the issue previously by you as the City Attorney and by the York County Attorney, both acknowledging the lack of judicial and statutory guidance in this area. If the Rescue Squad wishes to pursue the issue, perhaps a declaratory judgment action would be advisable to obtain judicial guidance in the absence of legislative guidance.

2/ According to records of the Secretary of State, the Fort Mill Rescue Squad is an eleemosynary corporation in good standing.

Mr. Mack
Page 4
January 10, 1991

The foregoing opinion is restricted to the factual situation presented, and thus this opinion is intended to be of very limited precedential value outside the above factual situation. Medical care, emergency and routine, is often provided to the public by eleemosynary corporations (through their agents and employees), and a different factual circumstance could require a conclusion different from that reached herein. Each such situation would require individual evaluation. 3/

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: Melvin B. McKeown, Jr.
York County Attorney

3/ Nor do we address a situation in which an eleemosynary or nonprofit corporation, under contract, performs a governmental service for a political subdivision. We have found such to be acceptable under proper circumstances. See Ops. Atty. Gen. dated April 17, 1985; October 31, 1985; and March 25, 1986, among others.