

The State of South Carolina

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Office of the Attorney General

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June 22, 1989

The Honorable Herbert Kirsh
Member, House of Representatives
Post Office Box 31
Clover, South Carolina 29710

Dear Representative Kirsh:

By your letter of June 8, 1989, you have inquired into the permissible sources of funding for a special tax district in York County known as "Water West." In addition, you have asked about enforcement procedures to compel compliance with the Freedom of Information Act by a public body. Each of your questions will be addressed separately, as follows.

"Water West"

Ordinance No. 1386 of York County Council created the special tax district known as the Western York County Water and Sewer District, or informally as "Water West." The referendum which was required by Section 4-9-30(5), Code of Laws of South Carolina, to be held prior to creation of the district and imposition of taxes, approved the levy of no millage to provide for the operation, maintenance, and function of the district. In addition, the issuance of general obligation bonds not to exceed \$22 million, to construct a water treatment and distribution system, was authorized by the electorate. These facts are noted in Section 1.06 of the ordinance.

In Section 2.04 of the ordinance, concerning the powers of the board set up to manage and operate the affairs of the district, is the following in subsection 17:

All funds appropriated, earned, granted or donated to District, including tax funds appropriated by the [York County] Council shall be deposited and expended as provided for in this ordinance. [Emphasis added.]

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At the very least, an ambiguous situation has been created: the electorate has authorized the imposition of no tax millage for the district for the operation and maintenance thereof, yet the cited language appears to anticipate appropriation of tax funds by York County Council.

To resolve this ambiguity, it should be noted that a legislative body will not be presumed to have done a futile act. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). It must be presumed that the legislative body was aware of the law (i.e., the referendum results and applicable law), as well. Graham v. State, 109 S.C. 301, 96 S.E. 138 (1918). Full effect must be given to all parts of a legislative enactment if at all possible. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979).

It is possible to resolve the ambiguity and give effect to both parts of the ordinance. Clearly, no millage is to be levied on behalf of the district; that point was made by the referendum results and is reflected within the ordinance. There are, however, instances in which tax monies might be appropriated by York County Council for the benefit of the district outside the scope of a tax millage levy for the operation, maintenance, and function of the district. For example, if general obligation bonds were issued pursuant to the County Bond Act, Sections 4-15-10 et seq. of the Code, taxes would be levied and collected according to Section 4-15-150 of the Code to create the sinking fund from which the bonds were to be repaid.^{1/} Another example would be appropriating tax funds remaining in a sinking fund, after a bond issue has been paid in full, to other county purposes. Op. Atty. Gen. No. 79-95 (copy enclosed). In either instance, tax funds could be appropriated for the benefit of the district.

It can be stated with certainty that no tax millage is to be levied for the operation, maintenance, and function of the district, according to the provisions of Section 1.06 of the ordinance. As to the use of other tax monies for purposes of the district, it is possible that some monies could be used for the district. Because this Office is not aware of the sources of such monies and further because this Office is not authorized to make determinations of a factual nature, Op. Atty. Gen. dated December 9, 1983, this Office must defer to York County Council to determine that the use of a particular source of funding is appropriate.

^{1/} In mentioning the County Bond Act, this Office is merely citing the Act as an example and does not intend to suggest that the Act would be the vehicle by which any of the \$22 million bonds would properly be issued.

Freedom of Information Act

The question has arisen as to how to enforce compliance with the Freedom of Information Act, by a public body, when a request has not been responded to within the statutorily-specified time frame.

Section 30-4-30(c) provides the following:

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

The civil remedies for a citizen aggrieved by the actions or inactions of a public body with respect to the Freedom of Information Act are found in Section 30-4-100 of the Code, as follows:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

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(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

A citizen interested in pursuing these remedies may wish to consult a private attorney toward compelling the public body to comply with the Act. In so advising you of these remedies, this Office is not addressing the merits of any particular request or case which may be pending under the Act.

With kindest regards, I am

Sincerely,

Patricia A. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions