

The State of South Carolina



Office of the Attorney General

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October 31, 1988

James L. Bridges, Esquire
Deputy County Attorney
County of Charleston
Post Office Box 777
Charleston, South Carolina 29402-0777

Dear Mr. Bridges:

By your letter of September 8, 1988, on behalf of Charleston County Council, you have asked whether the requirements of Act No. 488 of 1984 (codified as Section 6-11-1610 et seq. of the Code of Laws of South Carolina) would be applicable to the Boone Hall Fire District and the East Cooper Fire District, both created by Charleston County Council pursuant to Section 4-19-10 et seq. of the Code of Laws. For the reasons following, we concur with your conclusion that the requirements do not apply to these fire districts.

Act No. 488, 1984 Acts and Joint Resolutions, established reporting requirements for special purpose and public service districts, to report their financial and other activity information to the Secretary of State as a measure of accountability and to serve the public trust reposed in these districts. Because the definition of "special purpose district" found in Section 6-11-1610 of the Code is so broad and non-specific, this Office opined as to the various attributes which are usually found in such districts in Op. Atty. Gen. No. 84-132, a copy of which is enclosed. Without repeating the lengthy discussion herein, it may be noted that applicability of Act No. 488 must be made on a case-by-case basis. The factors frequently found in such districts, according to that opinion, include:

1. The purpose for which the district was established, whether single or general.

2. Whether the entity has corporate powers or duties.
3. How the governing body of the entity is chosen.
4. Whether the entity is empowered to issue revenue or general obligation bonds.
5. Whether the entity may levy tax assessments.
6. Whether the entity may issue notes or bonds.
7. How the entity was created.
8. Whether a county established the entity as a taxing district rather than a special purpose district.

The opinion also noted that a criterion for applicability "should be the separability of the district from a general purpose local governmental unit" since several references to independent special purpose districts are made in the act. See Op. Atty. Gen. dated September 26, 1984 (county library not a special purpose district).

With these factors in mind, each of the districts will be considered in turn.

Boone Hall Fire District

From an examination of the resolution of Charleston County Council establishing the Boone Hall Fire District, it is clear that this taxing district was established by council pursuant to Section 4-19-10 et seq. for the sole purpose of providing fire protection. Ad valorem taxes will be levied to cover the cost of providing fire protection service. An area between the Town of Mount Pleasant and the Awendaw Special Tax District will be served by the Boone Hall Fire District, as described in the resolution.

Charleston County Council will establish a budget for the district and otherwise provide oversight for the provision of services. There will be no governing body of the district, nor will the district itself issue notes, bonds, or other indicia of incurring indebtedness. 1/ No corporate powers or duties have been delegated to the district itself.

1/ It should be noted that Section 4-19-30 of the Code would authorize the issuance of bonds if the conditions specified therein are met. If at a future date bonds should be issued by this district, such action would not by itself be sufficient to have the district meet the definition of "special purpose district." The question becomes a closer one, but so many of the usual indicia would still be lacking that the district would remain a taxing entity of the county.

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Based on the foregoing, the Boone Hall Fire District does not appear to meet the criteria usually found in a special purpose district. Nor is the district an autonomous, self-governing body distinctly separate from Charleston County Council or county government. Thus, it must be concluded that Boone Hall Fire District is a taxing entity rather than a special purpose district as contemplated by the requirements of Section 6-11-1610 et seq. of the Code, and the report required thereunder would not be filed by the Boone Hall Fire District.

East Cooper Fire District

From information in a resolution of Charleston County Council provided to this Office, it appears that the East Cooper Fire District has been created by Charleston County Council pursuant to Section 4-19-10 et seq. of the Code. Fire protection will be offered to property owners located in a specified area of Charleston County east of the Cooper River, to be funded by the imposition of an ad valorem tax on all property located within the fire district.

Charleston County Council will establish a budget for the district and otherwise provide oversight for the provision of services. The district will have no governing body or corporate powers and duties, nor will the district itself issue any notes, bonds, or other indicia of incurring indebtedness. 2/

Based on the foregoing, the East Cooper Fire District does not appear to meet the criteria usually found in a special purpose district. Nor is the district an autonomous, self-governing body distinctly separate from Charleston County Council or county government. Thus it must be concluded that the East Cooper Fire District is a taxing entity rather than a special purpose district as contemplated by the requirements of Section 6-11-1610 et seq. of the Code, and the report required thereunder would not be filed by the East Cooper Fire District.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you should need clarification or additional assistance.

2/ See footnote 1.

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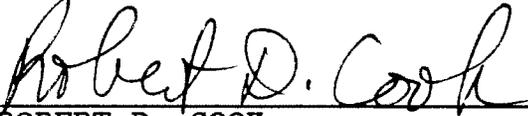
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:sds
Enclosure

REVIEWED AND APPROVED BY:



ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS

cc: The Honorable John T. Campbell
Secretary of State