

The State of South Carolina



Office of the Attorney General

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February 3, 1987

Edwin C. Haskell, III, Esquire
Assistant County Attorney
Spartanburg County Attorney's Office
Post Office Box 5306
Spartanburg, South Carolina 29304

Dear Mr. Haskell:

By your letter of November 25, 1986, you have raised several questions about levying taxes and provision of fire services when a portion of the Westview-Fairforest Fire District has been annexed into the City of Spartanburg. Most of the arguments in your memorandum were addressed by this Office in an opinion dated November 21, 1986, a copy of which is enclosed herewith. That opinion was based upon a virtually identical factual situation and concluded that when property in the Old Fort Fire District is annexed into the town of Summerville, the District's authority to levy a tax on such property would be superseded by the municipality. It must be noted, as stated in footnote 3, that the opinion was not free from doubt and that legislation or a declaratory action to clarify the matter would be advisable.

One issue raised in your letter but not addressed in the opinion of November 21, 1986, is the effect of the municipal annexation in diminishing the boundaries of a special purpose district in view of the statutory procedure of Section 6-11-410 et seq., Code of Laws of South Carolina (1976, as amended). As you point out, the statutory procedures were not followed since the diminution occurred as a result of annexation. It could perhaps be argued that the procedures of Section 6-11-410 et seq. were meant to be followed if a special purpose district wished to initiate a change in its boundaries, which would be entirely different from annexation. Unfortunately, however, the courts of this State have not yet given guidance

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on this question; as suggested in the opinion of November 21, 1986, legislation or declaratory action would be advisable as to this question as well, since there is no clear answer. ^{1/} We must also note that an annexation does not diminish boundaries per se; too, there may be instances in which the municipality does not provide some or all services being provided by the district. The impact of an annexation may thus vary from case to case.

We trust that the foregoing and the enclosed opinion will be helpful to you. Please advise if we may provide additional assistance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

^{1/} The South Carolina Supreme Court in Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983), examined a situation in which a county proposed to operate a water system within the county, which would effectively abolish a special purpose district established by the General Assembly to provide water services. Therein, the Court reiterates that special purpose districts are protected by Article VIII, Section 1 of the State Constitution until the General Assembly, by general law, see Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984), makes other provisions. Notwithstanding the Court's dicta, the decision did not address the effect which a municipal annexation would have upon a special purpose district. Thus, the advisability of clarifying legislation or a declaratory action becomes even more apparent.