

# The State of South Carolina



## Office of the Attorney General

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March 5, 1987

The Honorable Dill Blackwell  
Member, House of Representatives  
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Columbia, South Carolina 29211

Dear Representative Blackwell:

By your several recent letters, you have advised that a vacancy exists on the governing body of the North Greenville Fire District. You have asked for the advice of this Office with regard to filling the vacancy for the term of which more than five years are remaining due to the resignation of a commissioner. We must advise that there is no clear answer to your question, as will be seen by the following discussion; therefore, it may be advisable to resolve the problem by the adoption of general legislation by the General Assembly.

The North Greenville Fire District was created by Act No. 199 of 1971 for the purpose of providing fire protection in a specified area of Greenville County. Some, but not all, of the corporate powers and duties usually attributed to special purpose districts, have been given to the District. A tax levy is provided for in the enabling legislation, and the District may borrow in anticipation of taxes and issue notes therefor. As will be discussed more fully below, the governing body of the District is elected by the voters of the District. It therefore appears that the District meets most of the criteria usually attributed to a special purpose district. See, Op. Atty. Gen. No. 84-132. We have been advised by the Greenville County Attorney that the District is considered by Greenville County to be a special purpose district rather than a county agency.

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Section 4 of Act No. 199 of 1971 provides for governance by the Board of Fire Control. In part, that section provides:

There is established a Board of Fire Control for the North Greenville Fire District to be composed of five members who shall be elected for terms of six years. Provided, that of those first elected in the general election of 1972, two shall be elected for an initial term of four years and one for an initial term of two years. Provided, further, that upon the effective date of this act the County Council of Greenville County shall appoint all members of the board to serve until their successors are elected and qualify.

No provision is made within this portion of Act No. 199 to fill any vacancies which might occur.

#### Special Election

One suggested method of filling the vacancy is to hold a special election. Since the Board is elected by the voters of the District, it would be preferable to fill any vacancies by special election if at all possible. However, there appears to be no authority for calling a special election in this instance. It is well-recognized that an election held without statutory authorization therefor will be invalid. 29 C.J.S. Elections § 81. Section 7-13-190 of the Code of Laws of South Carolina (1986 Cum. Supp.) provides a mechanism for holding a special election but does not apply unless the holding of a special election is authorized by some other statute.

#### Act No. 263 of 1963

Act No. 263 of 1963 provides a mechanism for filling a vacancy on the governing body of the various water and sewer districts or subdistricts of Greenville County. This act has been suggested as a way to fill the vacancy; the act does not mention special purpose or public service districts generally,

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however, only water and sewer districts or subdistricts. The express mention of water and sewer districts or subdistricts would act to exclude all other types of districts not so expressly mentioned. Home Building & Loan Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938). Thus, we must conclude that Act No. 263 of 1963 would most probably not be applicable to this situation.

Greenville County Council

Another suggestion is that the Greenville County Council might appoint an individual to fill the vacancy. Two statutes would appear to preclude County Council's actions in this instance if the District should be characterized a special purpose district. Section 4-9-170 provides:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

Similarly, Section 4-9-80 of the Code provides in relevant part that the provisions of the Home Rule Act

shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by

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whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) . . . .

Thus, the General Assembly has placed special purpose or public service districts "off limits" with respect to county councils in this instance. 1/

#### Appointment By The Governor

The various statutes relative to appointment of officers by the Governor, for original appointment or to fill vacancies, include Section 1-3-210, 1-3-220, 4-11-20, and 4-11-30. The offices contemplated by Section 1-3-210 do not include members of governing bodies of fire or other special purpose or public service districts, and thus this statute does not apply herein. Section 4-11-30 does not apply because the office to be filled is not one for which the Governor is required to make an appointment. The Governor would be empowered to fill the vacancy only if Sections 4-11-20 or 1-3-220 could be found to be applicable in this instance.

Sections 4-11-20 and 1-3-220(b) of the Code provide for the Governor to make appointments to fill vacancies in county offices. However, the Governor must derive the appointment power in the first place from a constitutional or statutory provision. State v. Bowden, 92 S.C. 393, 75 S.E. 866 (1912), which as previously discussed is lacking here. Sections 4-11-20 and 1-3-220(b) would not be applicable here because the Board members lack countywide jurisdiction. See Ops. Attv. Gen. dated September 27, 1983; March 30, 1983; and March 16, 1983. This conclusion that Board members are not county officers is supported by the specific denial to county councils of appointing authority over special purpose or public service districts by Section 4-9-170 of the Code. Most probably, then, the Governor would not have authority to appoint an individual to fill the vacancy.

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1/ We note that Greenville County Council was authorized by Act No. 199 of 1971 to make initial appointments to the Board of Fire Control, after which elections were to be held. This act predated the adoption of the Home Rule Act in 1975; as noted above, similar action by a county council would now be precluded by Section 4-9-170 of the Code.

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To summarize the foregoing, this Office cannot locate any authority for election or appointment of an individual to fill a vacancy on the Board of Fire Control of the North Greenville Fire District. The best way to resolve the dilemma may be by the adoption of a general law by the General Assembly providing for the filling of vacancies in situations for which no such provision has been made.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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cc: Walter H. Parham, Esquire  
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