

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

May 14, 1987

Cary D. Chamblee, Deputy Director  
Land Resources Conservation Commission  
2221 Devine Street, Suite 222  
Columbia, South Carolina 29205

Dear Mr. Chamblee:

By your recent letter, you have referenced the laws relative to Watershed Conservation Districts and have asked about the effect of the Home Rule Act as to taxation authority of such districts created before and after the adoption of the Home Rule Act, Act No. 283 of 1975. Some districts were created by local legislation and others by the terms of Section 48-11-10 et seq. of the Code of Laws of South Carolina (1976, as revised). You have also inquired as to the effect if new legislation should be adopted mandating appointment rather than election of district directors would have upon the taxation authority of the districts.

Before Home Rule

It is necessary to examine the relevant statutes and local laws under which watershed conservation districts have been created, to determine the nature of the districts, before the effect of the Home Rule Act on taxing authority may be determined. Act No. 613 of 1967 established a statutory mechanism for creating watershed conservation districts; the Act is now codified at Section 48-11-10 et seq., as noted above. Section 48-11-10(1) defines a watershed conservation district to be "a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this chapter ... ." The procedure to be followed in establishing the districts is specified in Sections 48-11-20 et seq. The governing body of the district is established by Section 48-11-100, with the powers of the governing body detailed in Section 48-11-110. Watershed conservation districts are empowered to borrow money, execute promissory notes, and to levy an annual tax. Further fiscal powers of the districts are specified by Sections 48-11-120 through 48-11-160. Such fiscal powers granted to watershed conservation districts and the manner

2737  
Library

Opinion No. 87-18  
87128

Mr. Chamblee  
Page 2  
May 14, 1987

of establishing and governing the districts are similar to such powers and so forth granted to those districts usually considered special purpose districts. See Op. Atty. Gen. No. 84-132 (copy enclosed). Thus, based on the reasoning in Opinion No. 84-132, we would conclude that watershed conservation districts established pursuant to Section 48-11-10 et seq. of the Code would most likely be special purpose districts.

Local acts adopted by the General Assembly prior to the adoption of Act No. 613 in 1967 have been located for approximately one-half of South Carolina's 46 counties. You have advised that these individual laws contain similar governing body and taxation provisions as those found in Section 48-11-10 et seq. of the Code. The acts examined for about two dozen counties revealed local laws virtually identical to each other and to Section 48-11-10 et seq.; thus, for purposes of this opinion, it will be assumed that such are identical. It will be further assumed that, due to the similarities, each of these entities would also be special purpose districts.

Thus, whether a watershed conservation district was created by local legislation before the advent of home rule or by following Section 48-11-10 et seq. of the Code before the advent of home rule, each of the watershed conservation districts would be characterized a special purpose district.

Taxing powers of the watershed conservation districts include, as stated in your letter, the authority to levy annual taxes on real property in the district for the (1) payment of the costs of organizing the watershed conservation district or for carrying out any authorized purpose of the district and (2) payment of interest or any indebtedness incurred or bonds issued by the district, or to amortize any such indebtedness or bonds. See Sections 48-11-40, -90, -110(5), and -130 of the Code.

There appears to be no provision in the Home Rule Act which would vary the taxing authority of these special purpose districts created before the advent of home rule. Indeed, Section 4-9-80 of the Code, a portion of the Home Rule Act, provides:

The provisions of this chapter [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 whatever name designated, (which

Mr. Chamblee  
Page 3  
May 14, 1987

are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly  
... .

Thus, county councils after the advent of home rule are not to have additional powers devolved upon themselves as to special purpose districts. See, for example, Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). As to those watershed conservation districts created before the advent of home rule, there should be no change merely by virtue of adoption of the Home Rule Act. See also Michelin Tire Corporation v. Spartanburg County Treasurer, 281 S.C. 31, 314 S.E.2d 8 (1984).

#### After Home Rule

Any watershed conservation district created after adoption of the Home Rule Act would have been established pursuant to Section 48-11-10 et seq. of the Code. Such a district would, as noted above, be considered a special purpose district. Even though Section 4-9-80 speaks to special purpose districts which are in existence on the effective date of home rule in a particular county, nevertheless we are unable to locate any provision in the Home Rule Act which would affect the taxing authority of such districts created after the advent of home rule in a given county.

#### Appointment of District Directors

Your final question inquired as to the effect on taxation authority of possible legislation which, if adopted, would mandate appointment rather than election of watershed conservation district directors. Article X, Section 5 of the State Constitution provides in relevant part that "[n]o tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. ..." In Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981), this provision was interpreted in light of the taxing authority of the appointed Marlboro County Board of Education. The court stated:

As previously indicated, Article X, Section 5 recognizes that the power to levy

Mr. Chamblee  
Page 4  
May 14, 1987

taxes rests with the people. As such, we believe it constitutes an implied limitation upon the power of the General Assembly to delegate the taxing power. Where the power is delegated to a body composed of persons not assented to by the people nor subject to the supervisory control of a body chosen by the people, this constitutional restriction is violated.

Id., 277 S.C. at 244. A copy of the entire decision is enclosed for your use. Based upon this Supreme Court decision, we must caution that replacing the elected district directors with appointed directors could create a problem with Article X, Section 5 of the State Constitution, also called taxation without representation. 1/

We trust that the foregoing has adequately responded to your inquires. If you need clarification or additional information, please advise.

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  
Executive Assistant for Opinions

cc: P. Brooks Shealy  
Assistant Attorney General

---

1/ While not germane to your inquiry about taxing authority, should a change be made from elected to appointed district directors, such change would require preclearance by the United States Department of Justice under the Voting Rights Act of 1965, as amended.