

1012 File 7C

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The State of South Carolina



Office of the Attorney General

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March 20, 1985

The Honorable Charles H. Rice
Member, House of Representatives
309-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Rice:

You have inquired about the procedure for abolishing the police powers for the Gantt Fire, Sewer, and Police District of Greenville County and also about the procedure for reestablishing these same powers if desired at a later date. Based on the following, we would suggest that a general law enacted by the General Assembly would be the preferable procedure to follow.

The Gantt Water and Sewer District was established by Act No. 855, 1954 Acts and Joint Resolutions. In 1969, by Act No. 459, the name of district was changed to Gantt Fire, Sewer, and Police District, reflecting the deletion of water services and the addition of police protection. As to the latter, see Act No. 542, 1963 Acts and Joint Resolutions. The District is located completely within Greenville County.

One possible manner of abolishing the police power would be through an act of the General Assembly especially for the District. While this Office has examined no potential legislation on the matter, we would advise that the concept has constitutional difficulties. Article VIII, Section 7 of the Constitution of the State of South Carolina provides in part that "[n]o laws for a specific county shall be enacted." The South Carolina Supreme Court has struck down as unconstitutional many acts of the General Assembly pertaining to special purpose districts located within a single county. Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982);

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Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979) (copies of cases enclosed). To overcome such constitutional difficulties, a general act rather than a special act may be preferable.

Greenville County Council could not, by ordinance, abolish one of the functions of the District. As you will see from the full text of Section 4-9-80, Code of Laws of South Carolina (1984 Cum. Supp.) (enclosed), the Home Rule Act did not devolve additional powers upon county councils relative to special purpose or public service districts. The procedures for dissolution of such districts and absorption of functions by the county are specified by Section 4-9-80 and require action by both the county council and the General Assembly. This Code section has been interpreted recently by the state Supreme Court in Spartanburg Sanitary Sewer District v. City of Spartanburg, S.C., 321 S.E.2d 258 (1984) (enclosed); therein, the Supreme Court stated that such act of the General Assembly relative to dissolution of the district must be general in nature.

This Office has also examined statutes pertaining to creation of special purpose districts and the alteration of boundaries, issuance of bonds, and so forth. See Section 6-11-10 et seq. of the Code (1976 and 1984 Cum. Supp.). No provision within these statutes deals with abolition of a function. We must advise that we can locate no such provision to allow abolition of a function by the governing body or by the electors served by the District.

If the District is located within an unincorporated area of Greenville County, then, as a practical matter, the abolition of police powers within the District would most likely result in provision of such powers by the Sheriff of Greenville County. The citizens of the District would receive such services just as would the citizens of the entire county. To restore such services back to the District might take another general act of the General Assembly; this Office can locate no procedure by which a political subdivision such as a special purpose or public service district may establish police powers for itself.

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In conclusion, we suggest that a general act of the General Assembly would be preferable procedure to follow to abolish the police powers of the Gantt Fire, Sewer, and Police District. Of course, it is solely within the province of the General Assembly to determine how that body wishes to provide a solution for a problem which has not yet been addressed by the General Assembly.

If you would like to discuss potential problems or other aspects of the abolition of the police powers of the District, please advise us. We will also be happy to provide any clarification or additional information you may need.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

cc: Mr. Paul Baker

REVIEWED AND APPROVED BY:



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