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September 30, 1985

The Honorable Ronald P. Townsend
Member, House of Representatives
Route 5
Anderson, South Carolina 29621

Dear Representative Townsend:

Bob Cook, Executive Assistant for Opinions, asked that I respond to your letter of September 23, 1985, with respect to the following questions:

1. Whose jurisdiction has the power to raise taxes for the Anderson County Fire Departments, the County Council or the Delegation?
2. Can the Delegation raise the millage as the existing Act is written, or must the Delegation raise millage by introducing a new Bill?

The Anderson County Fire Protection Commission was created by Act No. 294, 1961 Acts and Joint Resolutions. This Office has determined previously that the Commission is a special purpose district. See Op. Atty. Gen. dated December 30, 1983. By Act No. 146, 1969 Acts and Joint Resolutions, the Commission is given the authority to

annually levy a tax not to exceed four mills in the aggregate on all of the taxable property of the county for the development and operation of the fire protection system...

You have advised that due to the continued expansion of the fire protection system in Anderson County, a levy of four mills is no longer sufficient. You are inquiring as to procedures which may be followed to increase the millage.

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Two alternatives are provided by general law to increase the millage levied by special purpose districts. Section 6-11-273, Code of Laws of South Carolina (1984 Cum.Supp.), is the first:

Notwithstanding any other provision of law, any special purpose district created by an act of the General Assembly which is authorized to levy taxes for the operation of the district may request the commissioners of election of the county in which the district is located to conduct a referendum to propose a change in the tax millage of the district. Upon receipt of such request the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district.

If a majority of the qualified electors of the district voting in the referendum vote in favor of the proposed tax millage change, the governing body of the district shall by resolution adopt the new millage rate which shall thereupon have the full force and effect of law.

The alternative is provided by Section 6-11-275 of the Code:

All special purpose districts totally located within a county, which were in existence prior to March 7, 1973, and which have the statutory authority to annually levy taxes for maintenance and operation are authorized to increase their respective millage limitations upon the written approval of the governing body of the county in which they are located. Any increase above the statutory limitation must be approved each year.

Any such millage increase shall be levied and collected by the appropriate county auditor and county treasurer.

This Code section was adopted as a part of Act No. 622, 1976 Acts and Joint Resolutions. Section 3 of that Act provides that "[t]he provisions of this act shall be cumulative and shall not

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be construed as repealing, amending or modifying any other provisions of law." Thus, Sections 6-11-273 and 6-11-275 provide two mechanisms for increasing tax millage limitations, depending upon whether a permanent increase or merely an increase in one annual tax levy should be desired.

These two Code sections provide the answer to your first question. As to the second question, neither general law nor the local acts pertaining to the Commission appear to give the Anderson County Delegation any authority to increase the millage. If an act were passed by the legislature to increase millage, such would very likely contravene Article VIII, Section 7 of the State Constitution, which prohibits the enactment of laws for a specific county. See Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

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

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions