

1983 WL 197508 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 30, 1983

*1 The Honorable T. Ed Garrison
Senator
District One
Anderson County Courthouse Annex
Anderson, South Carolina 29622

Dear Senator Garrison:

By your letter of December 12, 1983 you asked whether it would be possible to change the law to allow the Anderson County Council to make appointments to the Anderson County Fire Protection Commission. I would advise that County Council may not enact an ordinance to change the appointment procedure. The General Assembly would be the proper body to make such a change, but there are potential problems in such an action by the General Assembly.

The Anderson County Fire Protection Commission was created by 52 STAT. 494 (1961). As to appointing members of such special purpose districts, [Section 4-9-170, Code of Laws of South Carolina \(1976\)](#), states:

The council shall provide 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.

(Emphasis added.) The statute clearly states that a county council is not to have appointive powers for special purpose districts such as a fire commission. For Anderson County Council to enact an ordinance giving that body such appointive powers, the act would be ultra vires, outside the scope of authority granted to counties under Home Rule, Title 4 of the Code. Furthermore, ordinances repugnant to general law may not be enacted. See, [City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E. 2d 360 \(1953\)](#).

[Section 4-9-80 of the Code \(1982 Cum. Supp.\)](#) appears to apply in this instance; that statute does not devolve any additional duties relative to special purpose districts upon a county council, reserving modifications for action by the General Assembly. That section reads in pertinent part:

The provisions of this chapter 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 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[.]

*2 (Emphasis added.) It is apparent that the General Assembly has reserved for itself the power to modify special purpose districts such as a fire commission.

As noted in the first paragraph of this letter, potential problems exist with respect to the constitutionality of [Section 4-9-80](#), when read with [Article VIII, Section 7 of the Constitution of the State of South Carolina](#): “No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.” At least two prior opinions of this Office have questioned the constitutionality of [Section 4-9-80 of the Code](#); see Opinions dated November 23, 1983 and August 7, 1981 (copies enclosed).¹ So, it is possible that legislation involving solely the Anderson County Fire Protection Commission, if challenged in court pursuant to the Uniform Declaratory Judgment Act, Section 15-53-10, et seq. of the Code, could be declared unconstitutional.

Perhaps the best remedy would be for the General Assembly to enact a general law relative to appointment powers of county councils or to clarify what counties may and may not do, under Home Rule, relative to special purpose districts, such as enlarging or abolishing or modifying functions of the districts. In the meantime, appointment powers relative to the Anderson County Fire Protection Commission would remain with the Delegation.

I hope that this information will be of assistance as the Delegation meets in January. If you have additional questions, please contact me at 758-3970.

Sincerely,

Patricia D. Petway
Staff Attorney

Reviewed and Approved By:

Robert D. Cook
Executive Assistant for Opinions

Footnotes

¹ This Office is re-evaluating the conclusion of these opinions in light of the recent decision in [Berry v. Weeks](#) by the South Carolina Supreme Court (Opinion No. 22007, November 28, 1983).

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