



ALAN WILSON  
ATTORNEY GENERAL

July 16, 2015

Representative Richard L. "Richie" Yow  
South Carolina House of Representatives  
327D Blatt Building  
Columbia, SC 29201

Dear Representative Yow:

Attorney General Alan Wilson has referred your letter dated April 21, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issues** (as quoted from your letter):

- 1) *I respectfully request an opinion from your office relating to whether the Chesterfield County Council can change a Fire District Boundary which is also a special purpose tax district without the District Fire Board of Directors' concurrence or agreement.*
- 2) *Can the Chesterfield County Council change a Fire District Boundary which is also a special purpose tax district without a referendum vote from the taxpayers within the district, when the voters initially decided to become a special purpose tax district by a majority vote of all the citizens involved?*

**Law/Analysis:**

By way of background, it is this Office's understanding the fire district to which you refer to in your question was established January 8, 1985 by county ordinance following a referendum vote.<sup>1</sup> Chesterfield Or. No. 85-86-04 (1985). As an aside, the county ordinance establishing the fire district established all property of the fire district as owned and titled in the name of the county. Chesterfield Or. No. 85-86-04 § 5 (1985). Moreover, the ordinance authorized county council to "disband the district and dispose of said property" if it "feels" the district "jeopardizes the policies established by the Council." Chesterfield Or. No. 85-86-04 § 7 (1985).<sup>2</sup> Thus, the ordinance gives the authority to the county to maintain all assets in the county's name and to dissolve the special purpose district at the county's sole discretion if it feels the district is not in compliance with the county's policies. Id.

This Office has previously opined concerning the boundaries of a special purpose district that:

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<sup>1</sup> This Office will presume all aspects of the ordinance and the referendum complied with the law for purposes of this opinion.

<sup>2</sup> For purposes of this opinion, this Office will presume the ordinance is valid and constitutional.

As discussed in Berry [v. Weeks], 279 S.C. 543, 309 S.E.2d 744 (1983)], the county would have to comply with the requirements under the law in order to change the boundaries of a special purpose district. Id. Otherwise, special purpose districts have authority to continue until dissolved by referendum or otherwise modified. S.C. Code § 4-9-80. Moreover, as referenced in Berry, the law is clear in authorizing a county board to diminish the size of a special purpose district when it states in Section 6-11-420 "[t]he county boards of the several counties of the State are authorized to enlarge, diminish or consolidate any existing special purpose districts located within such county and authorize the issuance of general obligation bonds by such special purpose district by the procedure prescribed by this article." In regards to the "county boards" referenced in the statute, they are defined as "the governing bodies of the several counties of the State as now or hereafter constituted." S.C. Code §§ 6-11-410, 6-11-420. ... Moreover, as referenced above, in a 1988 opinion we stated:

Section 6-11-410 et seq. of the Code provides a mechanism whereby the service areas of special purpose districts created prior to March 7, 1973 may be enlarged, diminished, or consolidated, by action of the appropriate county council. It must be noted, however, that the Supreme Court in Berry v. Weeks, supra, basically stated that a county may not diminish a special purpose district's service area to the point of non-existence. Too, the diminishing of the service area to the extent that the county could fully assume the functions of the special purpose district was deemed not to be proper.

Op. S.C. Att'y Gen., 1988 WL 383504 (March 8, 1988).

Op. S.C. Att'y Gen., 2015 WL 992701 (February 12, 2015). However, as we noted in the 2015 opinion, South Carolina Code § 6-11-420, including the powers contained therein, only applies to special purpose districts defined in that article as "any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973 any local governmental function." S.C. Code § 6-11-410(a). Therefore, while we concluded that a county would have statutory authority to decrease the size of a special purpose district, our conclusion was limited to discussion of a special purpose district created before March 7, 1973. Op. S.C. Att'y Gen., 2015 WL 992701 (February 12, 2015); see also Op. S.C. Att'y Gen., 2003 WL 21040130 (February 19, 2003) (opining that S.C. Code §§ 4-11-290 and 6-11-420 regarding dissolution of special purpose districts apply to special purpose districts created by the General Assembly before March 7, 1973). It is this Office's understanding the special purpose district you refer to was created by county ordinance in 1985 following a referendum vote, so South Carolina Code §§ 4-11-290 et seq. and 6-11-420 et seq. would not apply to it. In another opinion, this Office concluded that the residents of a special purpose district would not have the opportunity to vote on changing the size of the district due to the county's authority to change the boundaries of the district pursuant to S.C. Code § 6-11-410 et seq. Op. S.C. Att'y Gen., 1995 WL 803372 (April 19, 1995). This Office also previously issued an opinion in 1975 indicating the only method residents of a county could withdraw from a special purpose district was to have county council alter the boundary lines of the

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special purpose district pursuant to S.C. Code § 59-599.91 (1965 Code, later became S.C. Code § 6-11-410 in the 1976 Code).<sup>3</sup> Op. S.C. Att'y Gen., 1975 WL 29270 (September 17, 1975).

This Office has also previously opined that the entity with authority to dissolve a special purpose district greatly depends on the way in which it was created. Op. S.C. Att'y Gen., 2003 WL 21040130 (February 19, 2003). We would use that reasoning in also answering your question concerning authority to decrease the size of a special purpose district, though we recognize that the way a special purpose district was created does not always apply to who has the authority to diminish it. Thus, let us examine a statute that applies not only to public service districts created by the General Assembly before March 7, 1963 but also applies to special purpose districts created by referendum and that are wholly within a single county. S.C. Code § 6-11-2010(1). South Carolina Code § 6-11-2020 states:

Notwithstanding any other provision of law, a special purpose district may be dissolved in accordance with this article upon a two-thirds vote of the qualified electors of the district voting in the referendum. These votes must be cast at a referendum held in accordance with this article and with the election laws of this State, *mutatis mutandis*.

This section gives voters within a special purpose district (as defined in S.C. Code § 6-11-2010(1)) authority to dissolve by referendum a special purpose district originally created pursuant to referendum by a two-thirds vote of the qualified electors of the district. While a court may determine otherwise, we think that pursuant to the maxim the greater includes the lesser, a court could conclude that the ability to dissolve by referendum would include the ability to decrease the geographical size of the special purpose district by referendum.<sup>4</sup> Op. S.C. Att'y Gen., 1985 WL 166044 (July 31, 1985); Palmer v. Dunn, 216 S.C. 559, 59 S.E2d 158 (1950); Wiggins v. Southern Bell Tel. & Tel. Co., 245 Ga. 526, 266 S.E.2d 148 (1980). However, please note this Office issued previous opinions stating there was no statutory method to change a special purpose district's boundaries if created by referendum, but those opinions were before S.C. Code § 6-11-2010 et seq. was passed by S.C. Act No. 397 of 1998 and S.C. Code § 4-9-30(5)(e) was also later added by S.C. Act No. 114 of 1991. See, e.g., Ops. S.C. Att'y Gen., 1985 WL 166035 (July 9, 1985) (opining that "safest and most prudent course" is to abolish a special purpose tax district the same way it was created under S.C. Code § 4-9-30(5)); 1984 WL 249881 (May 4, 1984) (concluding there was no other means in the law to dissolve a special purpose district other than § 4-9-80 and that dissolution required an act of the General Assembly and a referendum); 1982 WL 189218 (March 24, 1982) (concluding a special purpose district created pursuant § 4-9-30(5) could not be altered by it because § 6-11-410 applies to districts created by the General Assembly); 1967 WL 12078 (March 10, 1967) (the special purpose district created by act of the General Assembly and referendum may be changed by act of the General Assembly).

Conversely, pursuant to a county's statutory enumerated powers, it may decrease the boundaries or geographical size of a special purpose district located within the county. S.C. Code § 4-9-30(5)(e). South Carolina Act No. 114 of 1991 passed and included section (e) which stated:

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<sup>3</sup> Again noting that S.C. Code § 6-11-410 defines special purpose districts as created by the General Assembly before March 7, 1973, which we understand would not apply to the fire district in your question. Moreover, this 1975 opinion was written before S.C. Code § 4-9-30(5)(e) was added by 1991 S.C. Acts 114.

<sup>4</sup> Notwithstanding, this Office has previously concluded a county council may conduct an advisory referendum. Op. S.C. Att'y Gen., 1996 WL 679459 (October 11, 1996) (citing S.C. Code § 4-9-30 (16)).

County council may by ordinance diminish boundaries of or abolish a special tax district. It must first conduct a public hearing. Notice of the hearing must be given two weeks before it in a newspaper of general circulation in the tax district.

S.C. Code § 4-9-30(5)(e). This Act does not give much help in the background or findings regarding the passage of the amendment to the statute. 1991 S.C. Acts 114. However, further into the statute it reads:

The provisions of this chapter [of the S.C. Home Rule Act]<sup>5</sup> 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, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. ... *provided*, however, notwithstanding any other provision of law, when any county council under existing law is authorized to appoint members to the governing body of a public or special service district or a water resources commission within the county and such governing body by resolution directed to the council requests a change in the size or manner in which members of such governing body are selected, the council may by ordinance effect such changes and the council action shall have the full force and effect of law from the effective date of the ordinance.

S.C. Code § 4-9-80 (1976 Code, as amended) (emphasis added). Thus, we are cautious to expand the power of the county beyond what it is intended to be in regards to the will of voters through a referendum. Moreover, this Office has previously opined that a special purpose district cannot be reduced by a county to the point where it no longer exists. Op. S.C. Att'y Gen., 188 WL 383504 (March 8, 1988) (citing Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983)). However, one could argue that it could not be the intention of the law pursuant to South Carolina Code § 6-11-2020 to require a referendum each time you want to increase or decrease the size of a special purpose district (subject to the statute). Furthermore, South Carolina Code § 6-11-2020 authorizes a special purpose district to be dissolved by referendum "[n]otwithstanding any other provision of law." Therefore, S.C. Code § 6-11-2020 would not operate to the exclusion of § 4-9-30(5)(e) or any other law.

**Conclusion:**

Therefore, taking all of the above into consideration, this Office believes a court will determine that in this situation county council may change the fire district boundary without the agreement or consent of the fire district's board of directors. This Office believes a court would likely find pursuant to South Carolina Code § 4-9-30(5)(e) after a public hearing the county could reduce the size of the special purpose district created in 1985 pursuant to referendum, though we leave the final determination in the hands of a court. There are many other sources and authorities you may want to refer to for a further

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<sup>5</sup> Op. S.C. Att'y Gen., 1985 WL 259215 (September 3, 1985).

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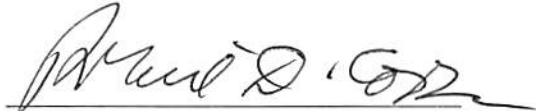
analysis. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as the court is charged with the interpretation of statutes. S.C. Code § 15-53-20. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General