



ALAN WILSON
ATTORNEY GENERAL

August 24, 2015

G.P. Callison, Jr., Esquire
McCormick County Attorney
c/o Callison Dorn Law Firm, PA
Post Office Box 3208
Greenwood, SC 29648

Dear Mr. Callison:

Attorney General Alan Wilson has referred your letter dated March 11, 2015 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letter):

- (1) May funds received by the SLV [Savannah Lakes Village] Special Tax District from the Special Tax District tax be lawfully spent, pursuant to the Agreement of Services between the SLV Special Tax District Commission with the Board of Directors of Sandy Branch FD [Fire District], for fire protection services provided by Sandy Branch FD to persons and property outside the SLV Special Tax District? A copy of the Agreement is enclosed herewith.¹*
- (2) May the SLV Commission lawfully pay the Sandy Branch FD the contractual fee of \$25.00 per person per Fire Run for all Fire and First Responder runs; including runs:
 - (a) outside the SLV Special Tax District; but within the Sandy Branch FD Fire District; and*
 - (b) mutual aid fire runs totally outside the Sandy Branch FD Fire District and outside the SLV Special Tax District?**
- (3) May SLV Special Tax District tax funds be used to construct and maintain fire houses, and/or fire hydrants outside SLV; but within the Sandy Branch Fire District?*
- (4) May SLV Special Tax District tax funds be used to test and flush fire hydrants installed outside the SLV Special Tax District?*
- (5) If the SLV Special Tax District employed part-time or full-time firefighters, would it be lawful for those firefighters to participate in Fire Runs outside the SLV Special Tax District; including mutual aid fire runs outside the SLV Special Tax District?*
- (6) If Sandy Branch FD employed paid part-time or full-time firefighters, could the SLV Commission lawfully reimburse Sandy Branch FD for either:
 - (a) their full salaries and administrative expenses; and/or*
 - (b) a portion of their salaries and administrative expenses proportional to the percentage of the paid firefighters runs within SLV Special Tax District to their total runs? If not, is there a formula or method by which the SLV Commission may reimburse all or part of these costs?**

¹ Per our discussion, our Office has neither received nor read a copy of the Agreement.

Law/Analysis:

By way of background and as expressed in a previous opinion, it is this Office's understanding that:

Savannah Lakes Village Special Tax District was created pursuant to Section 4-9-30 (5)(a) of the South Carolina Code of Laws, as outlined in McCormick County Council Ordinance 91-21. ... Based on the language in the ordinance, a commission of five members appointed by McCormick County Council was established and is called the Savannah Lakes Village Tax Commission. McCormick Co., S.C., Ordin. 91-21, Section V (a) (Nov. 26, 1991). ... [I]t is this Office's understanding the Savannah Lakes Village Special Tax District is not operating as an administrative division of the county but instead is operating under a separate commission called the Savannah Lakes Village Tax Commission pursuant to S.C. Code § 4-9-30 (5)(b).

The language in the ordinance concerning the Savannah Lakes Tax Commission further states [that "t]he Commission shall have the powers to negotiate all lawful contracts concerning the providing of fire protection, police protection, and emergency medical services for the district and shall generally look after the business affairs of the district relating to such services.[]"] McCormick Co., S.C., Ordin. 91-21, Section V (c) (Nov. 26, 1991).

Op. S.C. Att'y Gen., 2013 WL 3960433 (July 17, 2013). However, before we begin our analysis, let us make a distinction between the issues raised by your questions. One issue involves the District's taxing and spending authority which is separate and distinct from the other issue, being the District's ability to contract with other governmental entities.

Regarding the District's ability to contract for services, we look first to South Carolina Constitution Article VIII, § 13(A) which states:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

This Office has previously opined that a special purpose district is a political subdivision as referenced in S.C. Const. art. VIII, § 13(A) and may service areas outside the district pursuant to contract with a county or other political subdivision. Op. S.C. Att'y Gen., 1975 WL 22362 (July 31, 1975). Therefore, it is clear our State Constitution authorizes a political subdivision, such as the Savannah Lakes Village Special Tax District (hereinafter "the District"), to enter into a contractual agreement with the sharing of expenses for a function such as fire and first response services.

Regarding the terms of the contract entered into by the District, this Office has previously opined that as long as a contract was lawfully entered into (i.e. no fraud or abuse of discretion) by the political subdivision, a court will hold up such a contract in spite of what might appear to be an unwise deal. Op. S.C. Att'y Gen., 1990 WL 482417 (March 14, 1990). Moreover, regarding such agreements, our State Supreme Court has previously stated that "[State v. Boswell] stands for the proposition that statutes

governing multi-jurisdictional agreements must be strictly complied with to ensure the validity of the agreement. See Boswell, 391 S.C. 592 at 602, 707 S.E.2d 265 at 270 (2011) (recognizing the significance of territorial jurisdiction and concluding that a “more stringent approach needs to be followed in order to confer this type of authority”). The Burgess case also concluded authority to enter into multijurisdictional agreements was granted statutorily to the legislative body and thus could not be delegated to a law enforcement officer. State v. Burgess, 408 S.C. 421, 436, 759 S.E.2d 407, 415 (2014). Furthermore, this Office has previously opined that contributions of public funds by one political subdivision to assist another have been authorized. Op. S.C. Att’y Gen., 2014 WL 1909729 (April 29, 2014). In an opinion dated January 21, 1988, we noted that:

A number of other decisions of our Supreme Court have also upheld contributions of funds by a county to another governmental entity to assist in a public venture. Cothran v. Mallory, 211 S.C. 387, 45 S.E.2d 599 (Spartanburg County and City of Spartanburg jointly built auditorium); Shelor v. Pace, 151 S.C. 99, 148 S.E. 726 (Oconee County issued bonds for school purposes); Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (Jasper County issued bonds for school district); Stackhouse v. Flovd, 248 S.C. 183, 149 S.E.2d 437 (Dillon County issued bonds for school district); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (Florence County donated \$1,000,000 to Pee Dee Regional Health Service District to build hospital). And in a previous opinion, this Office concluded that the issuance of bonds in the amount of \$200,000 by Richland County in order to make a contribution for the construction of the Carolina Coliseum even though ‘title to the Coliseum will be in the University and control, thereof will be by the University.’ 1967 Op. Atty. Gen., Op. No. 2225, p. 23, 24.

It is true that the majority of the foregoing decisions were rendered prior to the adoption of new Article X of our Constitution and before the enactment of the Home Rule Act. See, § 4-9-10 et seq. However, it would appear that these prior decisions are consistent with the aforesaid newly adopted provisions of law. Article X, § 14(4) provides in pertinent part:

(4) General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision. (Emphasis added).

Op. S.C. Att’y Gen., 1985 WL 165976 (January 21, 1985) (emphasis added).

Based on the foregoing authorities, we believe a court would likely uphold the terms of an agreement for fire and first response services between the District and Sandy Branch Fire Department, noting the above conditions. In regards to the actual terms of a contract, “this Office ordinarily does not review and interpret contractual agreements where it has not participated in the negotiation thereof.” Op. S.C. Att’y Gen., 2013 WL 650578 (Feb. 7, 2013). Furthermore, this Office chooses not to make determinations of fact in a legal opinion. See, e.g., Op. S.C. Att’y Gen., 2010 WL 3896162 (Sept. 29, 2010) (“This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court”). Thus, unless the terms of the contract are illegal or the contract was fraudulently entered into, this Office believes a court of law will likely uphold any such agreement between two political subdivisions. Moreover, the sharing services by contract customarily would not change the title which property is held in. As we have discussed in a previous opinion to you, Savannah Lakes Village Special Tax District may have authority to purchase assets necessary for the

function of the district. Op. S.C. Att’y Gen., 2013 WL 3960433 (July 17, 2013). We also want to note that pursuant to S.C. Code Ann. § 6-11-100 and as mentioned in our 2013 opinion, such property may be maintained in either the name of the commission or the name of the district. Id.; S.C. Code Ann. § 6-11-100 (1976 Code, as amended).

Regarding taxes, South Carolina law authorizes money being drawn from the treasury of any political subdivision only pursuant to appropriations permitted by law. S.C. Const. art. X, § 8; S.C. Code Ann. § 11-9-10 (1976 Code, as amended). “No 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. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.” S.C. Const. art. X, § 5. Taxes collected for specific public purposes cannot be diverted to fund unbudgeted expenses unless the purpose for which the tax was levied is first satisfied. Op. S.C. Att’y Gen., 1991 WL 474751 (April 1, 1991). The South Carolina Constitution grants the General Assembly authority to “vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including special purpose districts, public service districts, and school districts” S.C. Const. art. X, § 6. Section 6 of Article X of the South Carolina Constitution goes on to state that:

Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed. For the tax year beginning 2007, each parcel of real property in this State shall have a maximum value for ad valorem taxes that does not exceed its fair market value. The General Assembly is authorized, by general law, to define “fair market value” and to define when property has been improved or when losses have occurred to change the value of the real property.

S.C. Const. art. X, § 6.² Moreover, our State Constitution requires “[a]n accurate statement of the receipts and expenditures of the public money shall be published annually in such manner as may be prescribed by law.” S.C. Const. art. 10, § 9. Nevertheless, “[n]o governing body may spend public funds... beyond its corporate purpose.” Op. S.C. Att’y Gen., 2014 WL 1398594 (March 12, 2014) (quoting Op. S.C. Att’y Gen., 2003 WL 21790882 (July 28, 2003)). This Office has previously opined that taxation levied by a special purpose district must be uniform within the boundaries of the public service district. See, e.g., Op. S.C. Att’y Gen., 1977 WL 46015 (April 5, 1977).

Regarding assessments for local improvements, our courts have stated:

Assessments for local improvements must be fairly and justly apportioned among those charged with their payment. A method of apportionment, whether by statute or by regulation, that is manifestly arbitrary or discriminatory does not fulfill the constitutional requirements of due process and equal protection. But there never

² S.C. Code § 4-9-30(5)(a) (1976 Code, as amended) regarding authorization to tax different areas at the rates related to the service provided, could be helpful in answering your questions, though the statute authorizes taxation by a county government.

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has been and probably never can be a perfectly equitable distribution of the tax burden; and statutes or regulations for the apportionment of assessments for local improvements are not to be stricken down merely because they fail to attain the unattainable. All that is required of them by constitutional law is that they apportion the burden of assessments with approximate equality, upon a reasonable basis of classification, and with due regard to the benefits to the individual property owners and the requirements of the public health, safety or welfare.

Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer & Fire Authority, 326 S.C. 67, 485 S.E.2d 92, 97 (1997) (citing Newton v. Hanlon, 248 S.C. 251 at 263, 149 S.E.2d 606 at 613 (1966)). However, your questions regard two different special purpose districts. In such a situation, this Office has concluded that "[i]f two separate special purpose districts exist whose service areas are identical, two different tax millages can constitutionally be imposed so long as each is uniformly imposed within its service area" to include two different special purpose districts may assess two different millages for the same service pursuant to contractual agreement between the districts. Op. S.C. Att'y Gen., 1977 WL 24631 (September 15, 1977).

Conclusion:

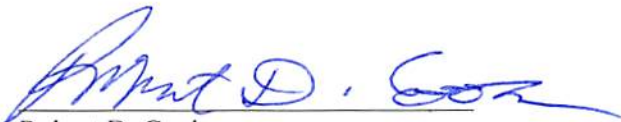
This Office believes a court would determine your special purpose fire district may execute a contract regarding services with another political subdivision, and a court would likely uphold the terms of the agreement as long as it was lawfully entered into. Furthermore, this Office believes a court would rule that two special purpose districts may charge different amounts for the same service for the areas they serve as long as the rate is consistent and uniform throughout the entirety of each special purpose district. Nevertheless, there are many other sources and authorities you may want to refer to for a further 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 Ann. § 15-53-20 (1976 Code, as amended). 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