

1977 WL 37035 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 23, 1977

\*1 Mr. F. G. Scurry  
Director for Conservation Districts  
South Carolina Land Resources Conservation Commission

QUESTIONS:

- (1) What is the legal effect of the territorial overlap of the Atkins drainage district and Back Swamp Watershed Conservation District?
- (2) How should the terms of office for the Back Swamp Watershed District Directors be determined?

AUTHORITIES:

Act No. 344 of 1920

Act No. 1134 of 1960

Act No. 602 of 1961

Section 48-11-10, et seq. of the 1976 Code of Laws of South Carolina (the S.C. Watershed Conservation District Act).

DISCUSSION:

I.

Your first inquiry concerns the operation of Section 48-11-30 of the 1976 Code of Laws of South Carolina as it relates to the old Atkins drainage district and the Back Swamp Watershed Conservation District.

The Atkins drainage district, (hereafter Atkins), now apparently defunct, was created by Act No. 344 of 1920. The Lynchburg-Shiloh Watershed Conservation District, you report, is now known as the Back Swamp Watershed Conservation District (hereafter Back Swamp), and was created pursuant to Act No. 1134 of 1960 (for specific areas of Sumter and Lee Counties) and Act No. 602 of 1961 (for Lee County generally), which expressly provides for the inclusion therein of most of the old Atkins drainage district stating, in pertinent part:

Provided, that the lands within the Atkins drainage district in Lee County which naturally drain into any swamps in Lee County may be included in a district. Section 3 of Act No. 602 of 1961.

The Legislature clearly intended, in our opinion, to provide that the specific land named be included in and administered by the new Back Swamp Watershed Conservation District, however, the remainder of Atkins apparently falls outside Back Swamp and could only be brought in through petition of the landowners as provided in the South Carolina Watershed Conservation Districts Act (Section 48-11-10, et seq. of the 1976 Code of Laws of South Carolina) or as otherwise provided.

We perceive no conflict in Back Swamp's administering the overlapped portion of the old Atkins drainage district for a number of reasons. First, the Atkins drainage district is not to be considered as equivalent to a watershed conservation district. However, even if it were to be so construed, the prohibition of Section 48-11-30 against overlapping districts would not apply inasmuch as that provision is applicable only to those districts which were authorized by law prior to April 14, 1967. (Section 48-11-210). Back Swamp, which was created in 1960, accordingly is not affected by the subject prohibition and is deemed to be properly constituted as including that portion of the old Atkins drainage district, as provided in the statute. Additionally, any prior inconsistent acts were expressly repealed by the terms of Section 20 of Act No. 1134 of 1960 and Section 20 of Act No. 602 of 1961, hence the 1920 Act would yield to the more recent laws where they may conflict.

#### CONCLUSION

\*2 Therefore, it is the opinion of this office that the inclusion of part of the Atkins drainage district by the Back Swamp Watershed Conservation District is entirely proper and consistent with the enabling legislation for the Back Swamp Watershed Conservation District and does not conflict with the prohibition of § 48-11-30 against overlapping districts.

#### II.

You have next sought guidance in determining the proper terms of office for the directors of the Back Swamp Watershed Conservation District. You have informed me that the original directors were elected on January 3, 1962, for terms as shown on the schedule which follows. Successive terms were thereafter to be for periods of four years each. The present directors, you report, were all qualified in 1966 and have served since the expiration of their initial terms in a de facto capacity, which means that they can perform the functions of their offices, but that the positions they hold are vacant in the sense that they may now be filled.

The law contemplates and requires that the staggered formation of terms as provided in the enabling act be continued. Since the original directors were certified in 1962 as having been properly elected for staggered terms, that certification should be considered as controlling. After service of the initial terms, the directors or their successors then should have served terms of four years each. The time for the expiration of the terms of office should be calculated from the date on which the original directors qualified, i.e. January 3, 1962. The following schedule illustrates the procedure:

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In filling the present positions, it should be noted that the statute provides for the election of initial directors and makes no reference to successor directors, except in Section 9, which states that the governing body shall consist of five directors elected as provided herein. Act No. 602, supra. It is the opinion of this office that the method provided for the initial nomination of directors should be followed for the nomination of successor directors. Thus, nominating petitions should be submitted containing the names of 25 or more landowners in order to nominate a candidate for the position of director. If only 5 directors are nominated, they are declared elected. If more than 5 are nominated, an election shall be held.

Successor directors may now be named as referred to above to fill all of the positions on the board of directors in that, from the information given me, all of them are now in a hold-over capacity.

#### CONCLUSION:

\*3 Therefore, it is the opinion of this office that the terms of office for the directors of the Back Swamp Watershed Conservation District should be computed from January 3, 1962, when the original directors qualified, and that successor directors may now be named to fill the vacant positions.

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Assistant Attorney General

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