

1977 WL 36976 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 28, 1977

*1 Mr. William E. Whitney, Jr.
Union County Attorney
203 West South Street
Union, South Carolina 29379

Dear Mr. Whitney:

You have requested assistance in resolving a home-rule problem with fire protection districts in Union County. Article 8, Section 7 of the SOUTH CAROLINA CONSTITUTION prohibits the creation of new special purpose districts within a given county. [Knight v. Salisbury, 262 S.C. 568, 206 S.E.2d 875 \(1974\)](#). This prohibition applies to any such special legislation enacted after March 7, 1973, the ratification date of the new Article 8. [Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 \(1973\)](#).

You cited three special acts which created new fire protection districts within Union County subsequent to March 7, 1973. These acts appear to be 'laws for a specific county' which are prohibited by Article 8, Section 7. Nevertheless, until such a time as they are declared unconstitutional by the court, the acts should be presumed valid. 2A SUTHERLAND'S STATUTORY CONSTRUCTION § 45.11.

If Union County Council wishes to provide fire protection services itself to these areas it may attempt to do so in the following manner. It may bring a declaratory judgment action to determine the constitutionality of the three special acts. If the acts are declared unconstitutional, then the Council may establish fire protection districts in those same areas pursuant to its powers granted in § 4-9-30(5), CODE OF LAWS OF SOUTH CAROLINA, 1976. However, if the acts are not held unconstitutional, then the functions of the fire districts may be assumed by the County Council only pursuant to § 4-9-80 of the CODE.

Your second question arises under the new Article 10 of the Constitution which becomes effective on November 30, 1977. Act No. 71, § 2, S. C. ACTS, 1977. If the function of providing fire protection service for those districts is assumed by the County Council through either of the two means described above, then the bonded indebtedness of those districts, incurred pursuant to Section 12 of the new Article, would not count against the eight percent debt limitation. Article 10, Section 7, S. C. CONST.

As I understand your third question, an answer to it is not needed since the bonded indebtedness of the districts would not be added to that of the county.

In addition to these three new fire protection districts, you asked also about three fire protection districts whose areas were enlarged by special acts of the General Assembly subsequent to March 7, 1973. These acts also appear to be special laws prohibited by Article 8, Section 7 of the Constitution. However, the County Council may choose to ratify the boundary changes through the procedure set out in § 6-11-410 ff., CODE OF LAWS OF SOUTH CAROLINA. This should eliminate the need for a declaratory judgment to determine the validity of the new boundaries. Then if the County Council wishes to assume the function or providing fire protection service itself to these districts, it may attempt to effect a transfer of those functions to the Council pursuant to § 4-9-80 of the CODE, as was discussed with respect to the new districts above.

*2 If we can be of any further assistance to you in this matter, please let us know.

Sincerely yours,

David C. Eckstrom

Staff Attorney

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