



ALAN WILSON  
ATTORNEY GENERAL

March 31, 2016

The Honorable Bryan Gardin, Chief  
Buffalo Fire Department  
132 Bailey Road  
Buffalo, SC 29321

Dear Chief Gardin:

Attorney General Alan Wilson has referred your letter dated January 18, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter): Whether the Buffalo Volunteer Fire Department is a special purpose district.

**Law/Analysis:**

By way of background, the Buffalo Volunteer Fire Department is listed as a nonprofit corporation in good standing with the South Carolina Secretary of State's Office with a filing date of April 21, 1960. [www.sos.sc.gov/index.asp?n=18&corporatedid=21000](http://www.sos.sc.gov/index.asp?n=18&corporatedid=21000) (last updated March 11, 2016). Furthermore, special purpose districts are required by law to register and file notification of their existence every other year with the South Carolina Secretary of State's Office pursuant to South Carolina Code § 6-11-1620. It is our understanding the Buffalo Volunteer Fire Department has currently filed its notices with the Secretary of State's Office and has filed in previous years.<sup>1</sup> However, when we attempted to search the tax exempt status of the Buffalo Volunteer Fire Department on the IRS's website, we were not able to locate any information. The only tax exempt entity came up as the Buffalo Volunteer Fire Department of Cherokee County SC Inc. The IRS' website acknowledges some entities do not have a tax-exempt number, including organizations organized pursuant to § 170(c)(1) of the Internal Revenue Code used exclusively for public purposes that are states and political subdivisions of states. <https://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Governmental-Information-Letter> (last updated Jan. 26, 2016). It is also our understanding that the Buffalo Volunteer Fire Department in Union County has no nonprofit tax exemption filed with the South Carolina Department of Revenue.<sup>2</sup> It is also our understanding that Union County lists the real property owned by the Buffalo Volunteer Fire Department as exempt from property taxes.

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<sup>1</sup> Please note the form filed with the Secretary of State's Office lists the method of selecting members of the governing body as elected by members of the fire department. Membership election from within the body would be considered consistent with the action of a private corporation. Please also see Footnote # 3.

<sup>2</sup> However, it is our understanding for purposes of this opinion that nonprofit organizations in S.C. are required to file with the S.C. Department of Revenue for an exemption, though political subdivisions used solely for public purposes as listed in S.C. Code § 12-37-220(A)(1) are exempt from such an application to S.C. Dep't of Revenue pursuant to S.C. Code § 12-4-720(A)(3). We will presume for purposes of this opinion that no such application filed means the Buffalo Volunteer Fire Department is claiming an exemption as a political subdivision used solely for public purposes.

It is this Office's understanding the South Carolina Legislative Council issued a letter to Representative Ronald Fleming dated February 21, 1995 which concluded that it found no authority for the Buffalo Volunteer Fire Department's creation as a special purpose district. Moreover, the letter stated that Legislative Council found only four acts that are relevant to the Buffalo Volunteer Fire Department. The acts it lists are Act No. 1142 of 1962 [1960], Act No. 650 of 1968, Act No. 1506 of 1974, and Act No. 378 of 1977. However, it is also our understanding the Buffalo Volunteer Fire Department mentioned it had a decree by the South Carolina Legislature in 1958 establishing the Buffalo Volunteer Fire Department in a letter to Representative Ronald Fleming, though we were not provided with a copy of any such decree.

Traditionally, this Office has used eight factors most frequently found in special purpose districts as guidance in determining whether an entity is a special purpose district. Op. S.C. Att'y Gen., 1984 WL 159938 (S.C.A.G. November 14, 1984). The factors are:

- 1) The purpose for which the district was established, whether single [independent] or general [local government (see Her Majesty Industries, Inc. v. Liberty Mutual Insurance Co., 379 F.Supp.658, 661 (D.S.C. 1974); Op. S.C. Att'y Gen., 1984 WL 249984 (S.C.A.G. September 26, 1984)].
- 2) Whether the entity has corporate powers or duties.
- 3) How the governing body of the entity is chosen.
- 4) Whether the entity is empowered to issue revenue or general obligation bonds. [See Berry v. Milliken, 234 S.C. 618, 109 S.E.2s 354 (1959).]
- 5) Whether the entity may levy tax assessments.
- 6) Whether the entity may issue notes or bonds [See Berry v. Milliken, 234 S.C. 618, 109 S.E.2d 354 (1959).]
- 7) How the entity was created [e.g., by the county, special legislation, referendum].
- 8) Whether a county established the entity as a taxing district rather than a special purpose district.

Id. However, without more information, we are not able to assess many of these factors. Using the Act numbers provided by Legislative Council, there is clear evidence by the General Assembly to describe the boundaries of the district. See Act No. 1506, 1974 S.C. Acts 3527; Act No. 378, 1977 S.C. Acts 1014. It is our understanding the Buffalo Volunteer Fire Department lists its enabling legislation as Act No. 378 of 1968. We would agree that the General Assembly intended to establish boundaries and taxing authority for the Buffalo Fire District, which we presume is the Buffalo Volunteer Fire Department in Union County in Act No. 378 of 1968.<sup>3</sup> Moreover, South Carolina Act No. 1650 of 1968 authorized a four mill tax levy after a favorable voter referendum for the Buffalo Fire District, and later, S.C. Act Number 378 of 1977 ratified a four-mill tax levy voted by referendum. Act No. 1650, 1968 S.C. Acts 3939; Act No. 378, 1977 S.C. Acts 1014.<sup>4</sup> The General Assembly also passed an act detailing the Buffalo Volunteer Fire Department's authority to inspect premises for fire hazards. See Act No. 1142, 1960 S.C. Acts 2936. Thus, there is evidence concerning factors one, two, five, seven and eight found within South Carolina law.

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<sup>3</sup> This is also based on Legislative Council's finding that Act No. 378 of 1968 applies to the Buffalo Volunteer Fire Department in Union County.

<sup>4</sup> Please note we are not aware of additional authorization for a tax levy so the current levy listed with the Secretary of State's Office at 13.8 mills would need to be properly authorized (e.g., by county council or referendum).

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Our State Supreme Court has previously opined that courts in South Carolina have determined entities to be special purpose districts even where they do not possess all of the usual characteristics of a special purpose district. Sloan v. Greenville Hosp. System, 388 S.C. 152, 694 S.E.2d 532 (2010) (citing Newman v. Richland County Historic Pres. Comm'n, 325 S.C. 79, 480 S.E.2d 172 (1997) (the Court found the Commission was a special purpose district even where the enabling legislation did not grant the entity any specific power to tax or issue certain bonds, and it lacked geographic bounds and designation as a district)). The Court in Sloan emphasized the requirements for a special purpose district created before home rule were that it was created by the General Assembly before March 7, 1963 to serve a local government function. Id. Pursuant to this test, it would appear the Buffalo Volunteer Fire Department could be considered a special purpose district.

As an aside, this Office has noted the distinction between a special purpose district created pursuant to an act of the General Assembly and one created pursuant to referendum. See, e.g., Op. S.C. Att'y Gen., 1980 WL 121150 (S.C.A.G. April 7, 1980). Contrastingly, a county council may create a special tax district pursuant to South Carolina Code § 4-9-30(5). It is possible that is how the Buffalo Volunteer Fire Department began. However, we are not aware of an ordinance, nor have we been provided any information indicating such an ordinance exists. We do note that a special tax district is different under the law from a special purpose district. See Op. S.C. Att'y Gen., 1984 WL 159938 (S.C.A.G. November 14, 1984).

**Conclusion:**

Based on the lack of information on the entity, there is certainly a question as to whether the Buffalo Volunteer Fire Department (based in Union County) is a special purpose district. Ultimately, it is the tax status (if operating as a nonprofit that is exempt pursuant to § 170(c)(1) of the Internal Revenue Code and not filing with the S.C. Department of Revenue pursuant to an exemption for political subdivisions), the entity's filings with the South Carolina Secretary of State's Office as a special purpose district and the General Assembly's Acts that would lead us to believe a court could conclude the entity is a special purpose district. Certainly the General Assembly recognized the entity by the Acts dedicated to the Buffalo Fire District in Union County by defining its boundaries, authorizing a tax levy for fire protection and granting authority to inspect premises. However, its status as a nonprofit corporation and the election of its members can be interpreted as inconsistent with its filing as a special purpose district and its receipt of taxpayer money. Thus, we ultimately defer to a court for a final determination as to the entity's status as this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. You may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. 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

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General