

1978 WL 35138 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 29, 1978

***1 RE: Watershed Conservation District Taxing Authority**

Mr. F.G. Scurry
Assistant Division Director for Soils and Watershed Development
2221 Devine Street, Suite 222
Columbia, S.C. 29205

Dear Mr. Scurry:

You have contacted this office in order to obtain an answer to the question of whether Chester County Council must approve the action of the Rocky Creek Watershed Conservation District if the district's board of directors levy a tax to fund its operations?

A review of the statutes applicable to the question presented reveals that the State legislature has in Chapter 11 of Title 48, S.C. Code of Laws (1976), both empowered watershed conservation districts to raise money and provided a specific procedure by which to do so.

In Section 48-11-110 are set forth the general powers of watershed conservation districts. The provision for the acquisition of necessary funding by each district is set forth as an enumerated power as follows:

(5) to levy an annual tax as hereinafter provided on the real property within the district for payment of the costs and expenses of organizing the watershed conservation district or for carrying out any authorized purpose of the district.

The specific steps to be taken by the district's board of directors, set out in Section 48-11-130, are (1) the preparation of an itemized budget of the funds needed, (2) the receipt of the approval of the proposed budget by the commissioners of the soil and conservation district (emphasis added), and (3) the setting of a rate at which the county auditor must levy a tax on all the real property within the district.

It is of no minor consequence that the legislature had earlier acted in 1965 to specifically provide for the creation of watershed districts in Chester County. At Section 10, Paragraph 4 of Act No. 548, 54 Acts and Joint Resolutions 1103 (1965), provision is made for the watershed districts to raise funds in wording almost identical to that quoted above from Paragraph 5 of Section 48-11-110. The difference in the two being an additional sentence which reads as follows: ‘. . . Such levy shall be made only after approval by the supervisors of the soil conservation district and the county legislative delegation (emphasis added) and upon notifying the county auditor.’

The extra condition set up in this sentence which is to be met by the Chester County districts in raising money is of considerable import for with the amendment of the State Constitution providing for home rule, the power of the county legislative delegation to approve or deny such a tax levy would apparently be devolved upon the Chester County Council. However, [Section 4-9-80 of the 1976 Code](#) specifically states that ‘The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to . . . other political subdivisions by whatever name designated. . . .’ Since Section 10 of Act 548 states that a watershed district organized under that law shall constitute a governmental subdivision of the state and a ‘public body corporate and politic,’ it follows that the Rocky Creek District

is a 'political subdivision' and that the government of Chester County is not vested under home rule with successor authority to the County legislative delegation as they applied to the affairs of the Rocky Creek Watershed District.

*2 In construing a statute or group of statutes, the primary guide is, of course, the intent of the legislature, [Helfrich v. Brasington Sand & Gravel Co.](#), 268 S.C. 236, 233 S.E.2d 291 (1977). It is the opinion of this Office that where as here the General Assembly has followed an item of special legislation (Act No. 548) with a more general enabling act that it can be concluded that the legislature intended to embody in its later, more general act the rules by which such districts as a kind should be run. The rule thus set down is that watershed directors need only receive the approval of the conservation district commissioners before levying a tax. Our interpretation of the impact of home rule legislation is in harmony with this rule and leads to the same result, namely, that the duly elected directors of the watershed district have control over the funding authority of the district subject only to the approval of the commissioners of the soil and water conservation district and not in subservience to the present county governing body.

Sincerely,

Reddick A. Bowman, Jr.
Assistant Attorney General

1978 WL 35138 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.