

1976 WL 30842 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 19, 1976

\*1 The Act bearing Ratification No. 635 authorizing the Holly Springs Fire District to borrow in anticipation of taxes is of questionable constitutionality. Prior to relying upon this Act in seeking a loan, the District should obtain a declaratory judgment determining the constitutionality of the Act.

Honorable J. C. Duncan  
Member  
House of Representatives

QUESTION PRESENTED:

Pursuant to the Act bearing Ratification No. 635 of 1976, may the Holly Springs Fire District borrow money in anticipation of taxes collected?

AUTHORITIES INVOLVED:

Article 8, Section 7, South Carolina Constitution;

[Knight v. Salisbury, 262 SC 565, 206 SE2d 875 \(1974\).](#)

[State ex rel. Daniel R. McLeod v. Civil and Criminal Court of Horry County, 266 SC 114 \(1976\).](#)

Act bearing R. No. 635 (1976).

DISCUSSION:

The Holly Springs Fire District was created as the Piedmont Rural Fire District by Act No. 1958 of 1972. As the District was originally established, it did not have the authority to borrow money in anticipation of the collection of taxes. In the spring of this year, by an Act bearing R. No. 635, the General Assembly attempted to amend Act 1958 by allowing the District to borrow up to fifty thousand (\$50,000) dollars in anticipation of taxes. This attempted amendment is unconstitutional on its face in that it violates Article 8, Section 7 of the South Carolina Constitution. Article 8, Section 7 provides in part:

No laws for a specific county shall be enacted . . .

The Supreme Court of South Carolina has interpreted this 1972 Amendment numerous times and has consistently held that the creation of a special purpose district after the ratification date of Article 8, Section 7 is unconstitutional. [See: Knight v. Salisbury, 262 SC 565, 206 SE2d 875 \(1974\).](#) It is unclear as to whether it is unconstitutional to amend the powers of a special purpose district created prior to the ratification of Article 8, Section 7, since this question has not been answered by the Supreme Court. Furthermore, there is a conflict in recent legislation as to whether the Legislature intended to allow special legislation in order to perpetuate or increase the authority of special purpose districts in existence prior to Article 8, Section 7 (i.e., Section 14-3705, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended,

authorizes the General Assembly to modify the authority of special purpose districts in existence prior to the ratification of Article 8, Section 7) or as to whether or not the General Assembly intended to transfer the power to amend the authority of special purpose districts to local county boards (i.e., Sections 59-559.1, et seq., CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, authorizes county boards to give special purpose districts the authority to issue general obligation bonds). Consequently, the constitutionality of the Act bearing Ratification No. 635 authorizes the Holly Springs Fire District to borrow money in anticipation of taxes is questionable. Before borrowing money in reliance upon this Act, it would be advisable to seek a declaratory judgment pursuant to Sections 10-2000, et seq., CODE OF LAWS OF SOUTH CAROLINA, to determine the constitutionality of the Act.

\*2 However, if the Holly Springs Fire District does not want to institute such a law suit, it may acquire funds pursuant to Section 59-5999.91, et seq. to construct a public building.

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