



ALAN WILSON
ATTORNEY GENERAL

March 6, 2018

Mr. Leon C. Harmon, Esquire
Anderson County Attorney
Post Office Box 8002
Anderson, SC 29622-8002

Dear Mr. Harmon:

We received your letter dated June 29, 2017 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):

*The Anderson County Fire Protection Commission, hereinafter "Commission", was created by an Act of South Carolina Legislature in 1961 and that legislation was codified in the 1962 South Carolina Code in §§14-891 through 14-900. (Exhibit 1). The statute has been amended on multiple occasions with the most recent being in 1999. (Exhibit 2). The 1999 legislation provides that the Anderson County Legislative Delegation must approve a budget "in which is recommended the amount of money needed for its purposes for the fiscal year." 1999 S.C. Acts. p. 1437. The statute further provides that "[a]fter the delegation approves the budget, the necessary levy is sent to the County Auditor who shall levy a tax on all taxable property of the County adequate for raising such sums needed, but the levy may not exceed six mills." *Id.* The 1999 legislation also provides that the Commission has authority "[t]o borrow money for its purposes in its name in advance and in anticipation of the collection of taxes levied, and to pledge those taxes as security for payment of any and all notes with the approval of the Anderson County Legislative Delegation." 1999 S.C. Acts p. 1436. With regard to an increase in the tax millage, the 1999 legislation provided as follows:*

Pursuant to the results of a favorable referendum which previously was conducted pursuant to Section 6-11-273 of the 1976 Code; the commission beginning with the year 1988, may annually recommend to the Anderson County Legislative Delegation a tax not to exceed six mills on all taxable property in its service area for the operation of the commission. If the commission recommends and the delegation agrees to a levy of more than six mills, a referendum must be conducted, initiated by the delegation, within the service area of the commission to approve the levy. A majority of the qualified elections voting on the levy over the six mills must approve the levy before the additional taxes may be levied. The service area of the commission for this purpose for the years 1988, 1989, and 1990 consists of the entire area of the County of Anderson except for those areas within the municipal limits of the cities of Anderson, Belton, Honea Path, Williamston, and that portion of Piedmont that comprises old School District No. 23. Effective

with the year 1991 and thereafter, the area within the town of Pelzer is also part of the service area of the commission.

1999 S.C. Acts pp 1438-39.

The commission is proposing a ten (10) year capital funding plan to meet its operations, maintenance, and infrastructure needs in an amount not to exceed \$30,000,000 and to issue general obligation bonds of the Commission in a principal amount not to exceed \$30,000,000. (Exhibit 3). The Commission has petitioned the Anderson County Council, pursuant to Title 6, Chapter 11, Article 5 of the South Carolina Code (S.C. Code Ann. §§ 6-11-810 through 6-11-1050) to authorize issuance of general obligation bonds by the Commission. For payment of the principal and interest on the general obligation bonds and for the creation of a sinking fund therefor, the Commission would irrevocably pledge its full faith, credit and taxing power and would levy annually a tax, without limit, on all taxable property within the area of the Commission in an amount sufficient to pay such principal of and interest on the bonds as they mature and to create a sinking fund. The Commission anticipate[s] an increase in its tax levy of four mills to pay for the proposed bond issue. This four (4) mill tax levy is in addition to the current six (6) mill levy that is imposed by the Commission's local legislation.

Anderson County operates under a Council-Administrator form of government. Under this form of government Anderson County has authority under South Carolina law to provide for and regulate public safety, including fire protection. See, e.g. S.C. Code Ann. §§ 4-9-30 (5); 4-19-10, et. seq. A South Carolina Attorney General's opinion has indicated that "inasmuch as the functions of a section 6-11-10 special purpose district are 'county functions' [see Knight vs. Salisbury, 262 S.C. 565, 206 S.E. 2d 875 (1974); Kleckley v. Pulliam, 265 S.C. 177, 217 S.E. 2d 217 (1975)], they are to be performed by and under the supervision of the county." Op. S.C. Att'y Gen., 1977 WL 37428 (S.C.A.G. September 19, 1977). Although the Commission was created by special legislation as explained herein, it is relying upon Title 6, Chapter 11, Article 5 of the South Carolina Code for Authority to incur bonded indebtedness for a capital funding project to meet its operations, maintenance, and infrastructure needs. Anderson County government exercises no control or supervision over the Commission; however, the Anderson County Legislative Delegation exercises control and supervision of the Commission through recommending appointment of Commission members to the Governor and approval of the Commission's budget.

With the above background information in mind, I am requesting an opinion on the following issues:

- 1. Does Home Rule legislation require that special purpose districts located only within one county (like the Commission located within Anderson County) which perform county functions be performed by and under the supervision of the County rather than the County Legislative Delegation?*
- 2. Does the local enabling legislation for the Commission which requires a referendum to increase a tax levy above six mills foreclose the Commission from utilizing other methods, such as the provisions of Title 6, Chapter 11, Article 5 of the South Carolina Code, to increase its tax levy above six mills?*

3. *What is the appropriate method or methods for a special purpose district, in this case the Commission, to increase its tax millage for meeting its operations, maintenance and infrastructure needs, including an analysis of the following:*
- a. *Through amendment of the special legislation creating the Commission, 1962 S.C. Code, §§ 14-89 1 through 14-900;*
 - b. *Through the procedure set forth in S.C. Code Ann. §§ 4-19-10, et. seq.*
 - c. *Through the procedure set forth in S.C. Code Ann. §§ 6- 11-271, et. seq;*
 - d. *Through the procedure set forth in Title 6, Chapter 1 1 , Article 5 of the South Carolina Code (S.C. Code Ann. §§ 6-11-810, et. seq. (the method requested by the Commission);*
 - e. *A combination of the above methods; or*
 - f. *Some other method or combination of methods.”*

Law/Analysis:

1. No, Home Rule does not require special purpose districts located only within one county to perform functions by and under the supervision of the county. South Carolina Code § 4-9-80 answers your question and states that:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. Upon the dissolution of any district within a county and the assumption of its function by the county government, the county shall take title to the property of the district and assume all of its debts and obligations which shall be retired by charges or assessment of taxes in those areas of the county receiving benefits from the facilities of the district; *provided*, however, notwithstanding any other provision of law, when any county council under existing law is authorized to appoint members to the governing body of a public or special service district or a water resources commission within the county and such governing body by resolution directed to the council requests a change in the size or manner in which members of such governing body are selected, the council may by ordinance effect such changes and the council action shall have the full force and effect of law from the effective date of the ordinance.

S.C. Code Ann. § 4-9-80 (1976 Code, as amended) (emphasis added). Additionally, this Office recognizes there may be other authority to reach this same conclusion.

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2) & 3) This Office issued two prior opinions regarding the Anderson County Fire Protection Commission and the ability to increase its operating millage. See Ops. S.C. Att'y Gen., 1990 WL 599211 (S.C.A.G. February 22, 1990); 1985 WL 166077 (S.C.A.G. September 30, 1985). Those two opinions explain the only two methods by general law to increase operating millage for the Anderson County Fire Protection Commission special purpose district are pursuant to South Carolina Code Ann. § 6-11-273 and § 6-11-275. Id. Please refer to those opinions to answer your questions regarding raising operating millage. We have enclosed a copy of these opinions with this letter. Traditionally, this Office does not overrule a prior opinion unless there has been a change in the law or where there is clear error. See, e.g., Ops. S.C. Att'y Gen., 2017 WL 1290050 (S.C.A.G. March 24, 2017); 2013 WL 6516330 (S.C.A.G. November 25, 2013); 2013 WL 3762706 (S.C.A.G. July 1, 2013); 2009 WL 959641 (S.C.A.G. March 4, 2009); 2006 WL 2849807 (S.C.A.G. September 29, 2006); 2005 WL 2250210 (S.C.A.G. September 8, 2005); 1986 WL 289899 (S.C.A.G. October 3, 1986); 1984 WL 249796 (S.C.A.G. April 9, 1984). However, it is this Office's understanding, as you mention in your letter, the South Carolina General Assembly passed Act No. 175 of 1999 which, in relevant part, amended Section 2(d) of Act 294 of 1961 regarding the Anderson County Fire Protection Commission to read:

(d) To annually recommend to the Anderson County Legislative Delegation a tax not to exceed six mills in the aggregate on all of the taxable property of the county for the development and operation of the fire protection system except that property within the municipal limits of the cities of Anderson, Belton, Honea Path, Williamston, and that portion of Piedmont that comprises old School District No. 23.

Act No. 175, 1999 S.C. Acts 1436. This Office presumes the constitutionality of a statute, and as such, will continue to adhere to our 1990 and 1985 opinions, noting the change in the law of the 1999 amendment, except where there is clear error. See, e.g., Ops. S.C. Att'y Gen., 1995 WL 803564 (S.C.A.G. May 11, 1995) (citing Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939)). Finding no clear error of law, this Office continues to adhere to the conclusions reached in our 1990 and 1985 opinions. Furthermore, if a court were to declare Act No. 175 of 1999 unconstitutional, the Office would likewise adhere to the conclusions reached in our 1990 and 1985 opinions regarding operating millage in the absence of showing of clear error. Regarding general obligation bonds for a special purpose district, the South Carolina Supreme Court has cited South Carolina Code Ann. § 6-11-990 as authority to levy "a tax without limit on all taxable property in the special purpose district sufficient to pay the principal and interest of such bonds as they respectively mature..." St. Andrews Public Service Dist. v. Moseley, 323 S.C. 389, 391, 475 S.E.2d 750 (1996). Regarding the debt limit and general obligation bonds for special purpose districts, this Office has written an opinion dated March 4, 2016 which we are enclosing for your review. See Op. S.C. Att'y Gen., 2016 WL 1167302 (S.C.A.G. March 4, 2016). Please let us know if these opinions do not answer your questions.

Conclusion:

It is this Office's opinion that a court will determine that pursuant to South Carolina Code § 4-9-80, Home Rule does not require special purpose districts located only within one county to perform functions by and under the supervision of the county. Moreover, regarding your second and third

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questions concerning increasing operating millage, this Office has issued two prior opinions which provide a detailed response to the issues raised. See Ops. S.C. Att’y Gen., 1990 WL 599211 (S.C.A.G. February 22, 1990); 1985 WL 166077 (S.C.A.G. September 30, 1985). Those two opinions explain the only two methods by general law to increase operating millage for the Anderson County Fire Protection Commission special purpose district are pursuant to South Carolina Code Ann. § 6-11-273 and § 6-11-275. Id. Additionally, as stated above, the South Carolina Supreme Court has cited South Carolina Code Ann. § 6-11-990 as authority for a special purpose district to levy “a tax without limit on all taxable property in the special purpose district sufficient to pay the principal and interest of such bonds as they respectively mature...” St. Andrews Public Service Dist. v. Moseley, 323 S.C. 389, 391, 475 S.E.2d 750 (1996). Moreover, this Office issued an opinion dated March 4, 2016 regarding the debt limit and general obligation bonds for special purpose districts. See Op. S.C. Att’y Gen., 2016 WL 1167302 (S.C.A.G. March 4, 2016). We have enclosed copies of these opinions for your review. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. 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. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, 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 Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General