



ALAN WILSON
ATTORNEY GENERAL

May 03, 2019

The Honorable Glenn G. Reese
Member
South Carolina Senate
District No. 11
PO Box 142
Columbia, SC 29202

Dear Senator Reese:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

1. Can an SPD Fire Department with elected commissioners which has a taxing district, such as Mayo Fire Department, charge a levy or fee above their normal millage or taxing authority, as under Title 6 Local Government Provisions applicable to SPD's and other political sub-divisions: As under Chapter 11 , Section 6-11-140?
2. Can an SPD Fire Department such as Mayo Fire Department, which has a normal taxing district, merge with another SPD Fire Department half-way across the county, where the districts are 15 miles apart and not contiguous, in order to get a higher tax millage rate?

Law/Analysis

- I. How can a special purpose district with elected commissioners charge a levy or fee above their normal millage or taxing authority?

This Office's recent February 27, 2019 opinion addressed how a special purpose district may raise its millage rate above its normal millage or taxing authority. Op. S.C. Att'y Gen., 2019 WL 1644925, 4-6 (February 27, 2019). However, the request letter asks a more specific question regarding how special purpose districts with elected commissioners can raise its millage rate as under S.C. Code Ann. § 6-11-140. In relevant part, Section 6-11-140 states that a board of commissioners of a fire protection district "shall establish and maintain just and equitable rates, rentals or charges for the use of and the service rendered ... and may change or adjust such rates or charges from time to time." This statute broadly requires special purpose districts to establish

“just and equitable rates” and the language regarding the authority to adjust rates thereunder does not appear to grant authority to exceed a legally established maximum millage rate.

The more specific statutes addressed in this Office’s prior opinions summarize the methods by which a special purpose district may raise its millage rates above its normal rate limit. Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (“The general rule of statutory construction is that a specific statute prevails over a more general one.”). This Office’s February 22, 1990 opinion to Representative Ronald P. Townsend addressed whether the Anderson County Fire Protection Commission could increase its millage without its legislative delegation’s consent as follows:

The two methods of which we are aware, by which millage may be increased for the benefit of a special purpose district, are in Sections 6-11-273 and 6-11-275 of the South Carolina Code of Laws (1988 Cum. Supp.), as cited in the enclosed opinion. Certain actions by Anderson County Council would be required if one of these statutes should be followed ...

As noted in the enclosed opinion, Section 6-11-275 provides a mechanism for a one-year increase in a millage limitation of a special purpose district by written approval of the county's governing body (county council). Following this mechanism, a referendum would not be required. Section 6-11-273 provides a procedure by which a referendum may be held to increase millage limitations on a basis other than one year at a time.

Op. S.C. Att’y Gen., 1990 WL 599211 (February 22, 1990).

Subsequently, the General Assembly enacted S.C. Code Ann. § 6-11-271 with the stated purpose of “CLARIFY[ING] THE AUTHORITY OF CERTAIN SPECIAL PURPOSE DISTRICTS TO LEVY MILLAGE AND PROVIDE GOVERNMENTAL SERVICES.” 1998 Act No. 397, § 4. This Office’s February 12, 2003 opinion to Patrick Murray, Fire Chief for the Cherokee Spring Fire District, explained how a fire district with elected members could raise its millage rates and found Section 6-11-271 applicable as follows:

S.C. Code Ann. §§ 6-11-271, 6-11-273 and 6-11-275 provide additional authority for special purpose districts to raise millage rates. As the Cherokee Springs Fire District was created by legislative act in 1965 and you advise that the District's board of fire control is now elected rather than appointed, Section 6-11-271 applies to the district based on the following provisions:

(A) For purposes of this section, “special purpose district” means any special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly of this State.

...

(D) Notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification in the tax millage of the district. Upon receipt of such request, the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district. If approved by referendum, such modification in tax millage shall remain effective until changed in a manner provided by law.

(E)(1) All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.

Similar to Section 6-11-271(D), Section 6-11-273 states that

Notwithstanding any other provision of law, any special purpose district created by an act of the General Assembly which is authorized to levy taxes for the operation of the district may request the commissioners of election of the county in which the district is located to conduct a referendum to propose a change in the tax millage of the district. Upon receipt of such request the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district. If a majority of the qualified electors of the district voting in the referendum vote in favor of the proposed tax millage change, the governing body of the district shall by resolution adopt the new millage rate which shall thereupon have the full force and effect of law.

Finally, Section 6-11-275 provides that

All special purpose districts totally located within a county, which were in existence prior to March 7, 1973, and which have the statutory authority to annually levy taxes for maintenance and operation are authorized to increase their respective millage limitations upon the written approval of the governing body of the county in which they are located. Any increase above the statutory limitation must be approved each year. Any such millage increase shall be levied and collected by the appropriate county auditor and county treasurer.

Op. S.C. Att’y Gen., 2003 WL 21040134, at 2–3 (February 12, 2003) (emphasis added). While subsections (B) or (C) are limited to “those special purpose districts the governing bodies of which are not elected,” the emphasized language demonstrates that subsections (D) and (E) are also applicable to special purpose districts with elected commissioners. Id. Finally, the opinion examined how a special purpose district could increase its millage rate based on increases in the consumer price index according to S.C. Code Ann. § 6-1-320. Id. The opinion concluded by stating, “I have been able to locate no other authority which would allow a special purpose district to increase its millage rate outside of Sections 6-1-320, 6-11-271, 6-11-273 and 6-11-275.” Id. This Office reaffirms its conclusion that a special purpose district whose board members are elected may increase its millage rate according to the procedures established in S.C. Code Ann. §§ 6-1-320, 6-11-271, 6-11-273 or 6-11-275.

II. Can a special purpose district fire department merge with another special purpose district fire department half-way across the county?

It is this Office’s opinion that a special purpose district may be merged with another special purpose district within the same county by either of two methods codified in Chapter 11 of Title 6 of the South Carolina Code of Laws; dissolution or consolidation. This Office’s February 19, 2003 opinion to Representative Ralph Davenport addressed a similar issue regarding the dissolution of one water district and placing it under the control of a separate water district within the same county. Op. S.C. Att’y Gen., 2003 WL 21040130 (February 19, 2003). The opinion concluded that this could be accomplished by the statutory procedures of (1) dissolving one special purpose district and having another act as its successor provider, or (2) consolidating two special purpose districts within the same county. Id. This opinion will explain how these procedures can result in what may be described as a merger of two special purpose districts.

In 1998, the General Assembly enacted Act No. 397, § 3 which added Article 15 to Chapter 11 of Title 6 of the South Carolina Code with the stated purpose of providing a procedure for the dissolution of a special purpose district. See S.C. Code Ann. §§ 6-11-2010 to -2150. These provisions allow a special purpose district created by an Act of the General Assembly prior to March 7, 1973 to be dissolved “upon a two-thirds vote of the qualified electors of the district voting in the referendum.” S.C. Code Ann. § 6-11-2020. First, however, a

petition must gain the signatures of “at least forty percent of the qualified electors of the district” and then be forwarded to each political subdivision that the petition names as a “successor provider” before such a referendum is authorized. S.C. Code Ann. §§ 6-11-2060, -2070. The successor providers agree “to become responsible for the assets and liabilities of the district and to provide the service or services set forth in the petition upon the dissolution of the district.” S.C. Code Ann. § 6-11-2030. Each successor provider, by resolution or ordinance, must state that “the political subdivision is authorized by law to provide such service or services” and “is authorized to and shall ... issue such obligations as are necessary to fully pay or defease all outstanding general obligation bonds, revenue bonds, lease-purchase obligations, and other obligations of the district.” Id.

Next, Article 3 of Title 6, Chapter 11 establishes a procedure by which the governing body of a county may enlarge, diminish, or consolidate special purpose districts within its jurisdiction. S.C. Code Ann. §§ 6-11-410 et. seq. Similar to dissolution above, consolidation is limited to those districts “created by act of the General Assembly prior to March 7, 1973” S.C. Code Ann. §§ 6-11-410(a). The governing body of a county may initiate this procedure on its own motion or “upon the petition of the commissions of the special purpose districts to be affected.” S.C. Code Ann. § 6-11-430. The county board must then order a public hearing be held to determine “whether and to what extent a special purpose district shall be enlarged, diminished or consolidated.” Id. After this public hearing, the county board shall “make a finding as to whether and to what extent the boundaries of the special purpose district shall be changed or whether the special purpose districts shall be consolidated.” S.C. Code Ann. § 6-11-460. Accordingly, it is this Office’s opinion that a special purpose district may accomplish what could be described as a merger of two special purpose districts by either (1) dissolving one special purpose district and having another act as its successor provider, or (2) consolidating two special purpose districts within the same county. See S.C. Code Ann. §§ 6-11-2010 to -2150; S.C. Code Ann. §§ 6-11-410 et. seq.

Conclusion

As discussed more fully above, it is this Office’s opinion that a court would likely find a special purpose district with elected board members that seeks to raise its millage rate above its normal millage or taxing authority must do so in accordance with the procedures established in S.C. Code Ann. §§ 6-1-320, 6-11-271, 6-11-273 or 6-11-275. Further, a special purpose district may accomplish what could be described as a merger of two special purpose districts by either (1) dissolving one special purpose district and having another act as its successor provider, or (2) consolidating two special purpose districts within the same county. See S.C. Code Ann. §§ 6-11-2010 to -2150; S.C. Code Ann. §§ 6-11-410 et. seq.

The Honorable Glenn G. Reese
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Sincerely,

A handwritten signature in blue ink that reads "Matthew Houck". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink that reads "Robert D. Cook". The signature is cursive and somewhat stylized, with a horizontal line drawn underneath it.

Robert D. Cook
Solicitor General