ALAN WILSON
ATTORNEY GENERAL

August 14, 2023

The Honorable Sharon H. West, Auditor
Spartanburg County
County Administrative Building, Suite 200
366 North Church Street
Spartanburg, South Carolina 29303

Dear Ms. West:

We received your request for an opinion of this Office as to whether a sewer district can levy an ad valorem tax on property having no access to the sewer system? With your request, you included the following information:

> We have a sewer district for which I levy 8.6 mils for ad valorem property tax. The district has annexed property over the years and the annexed property is charged 8.6 mils for the district even though the property has no access to the sewer line. The district identifies the benefit to the owners of the property within the district who cannot access the sewer line as a $45 reimbursement if the property owner has a problem with his septic tank and is charged for the repair. A taxpayer in the sewer district who owns and lives in $150,000 home (average value of an owner-occupied home in Spartanburg County) will pay more than $50 tax for the sewer each year. The property within the district with access to the sewer line pays the same 8.6 mils but has the advantage of tapping onto the sewer line by paying a tap on fee.
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> The sewer district was created by the General Assembly and is run by commissioners who are elected by those who live within the district. These elected commissioners have the authority to establish the millage rate.

Law/Analysis

We presume you are referring to the Spartanburg Sanitary Sewer District (the "District"). According to Act 1503 of 1970, the General Assembly established the District in 1929 by Act 556 to provide "interceptor trunk lines and sewerage treatment facilities within the district." 1970 S.C. Acts 1503. Act 1503 placed governance of the District with its elected commission and gave the commission the authority to impose charges, assessments, and ad valorem taxes as may be required for carrying out its purposes. Id. In fact, Act 1503 requires "a tax levy shall be annually made on all taxable property within the district for the purpose of paying the principal and interest [of its general obligation bonds]." Id. (emphasis added). Act 1503 also provides:

> For the payment of the general obligation bonds, both principal and interest, the full faith, credit, resources and taxing power of the district shall be pledged and there shall be levied annually an ad valorem tax without limit as to rate or amount on all taxable property as hereinabove specifically provided sufficient to pay the principal of and interest on the bonds as they become due. In addition to the above, there shall also be levied annually an ad valorem tax without limit as to rate or amount on all taxable property within the district sufficient to provide for the administrative expenses of the district and for the cost of maintenance and operation of the interceptors and the sewerage treatment facilities of the district . . . The commissioners of the district shall be authorized and empowered to annually determine the amount of millage required for administrative and operational expenses as above referred to and to pay the above-mentioned principal and interest on outstanding bonds of the district.

Id. (emphasis added). Thus, according to the District's enabling legislation, its commission is mandated to levy an ad valorem tax on all taxable property within the district sufficient to meet its bond obligations and cover its administrative expenses as well as the cost of maintenance and operation of its interceptors and the sewerage treatment facilities. Moreover, the general law regarding special purpose and public service districts allows for the levy, collection, and disbursement of taxes by special purpose and public service districts and provides as follows:

> After the approval thereof by the county supervisor, taxes shall be levied to meet such expenses upon all assessable property in the district and upon collection of them by the county treasurer they shall be disbursed only upon the approval of the board of commissioners of the said electric light, water supply, fire protection or sewerage district, as the case may be, by an order on the county treasurer drawn by the supervisor of the county in which said district is located. All taxes so levied for any such district shall be kept separate on the assessment roll from other levies and moneys so collected shall be kept in a separate fund for the district.

S.C. Code Ann. § 6-11-270 (2004) (emphasis added). As such, general law requires any tax levied by a special purpose or public service district must be levied on all property located within its boundaries. Both the special law governing the District and general law governing special purpose and public service districts are consistent with article X, sections 1[1] and 6[2] of the South Carolina Constitution (2009), which require uniform taxation within a political subdivision imposing a tax.

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[1] Article X, § 1 requires "[t]he assessment of all property shall be equal and uniform . . . ."

[2] Article X, § 6 states in relevant part:

> Except as otherwise provided in this section, the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including counties, municipalities, special purpose districts, public service districts, and school districts. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits

In your letter, you reference two opinions issued by this Office in 2008 and 2018. The 2008 opinion addressed whether a county can impose sewer fees on county residents who do not receive sewer service. Op. Att'y Gen., 2008 WL 5476554 (S.C.A.G. Dec. 3, 2008). First, we considered the test for a valid uniform service charge employed by the Supreme Court in C.R. Campbell Construction Company v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437, 438 (1997), which requires the charge to benefit the payer. Id. Then, we considered the statutory authority allowing counties to levy fees including section 6-15-10 of the South Carolina Code which states they may be levied upon "those to whom service is rendered . . . ." Id. Thus, we concluded "those paying the fee must at a minimum receive some benefit from paying the charge." Id.

In our 2018 opinion, we considered whether a county can charge a sewer fee on homes and cars whose owners are not on the sewer line. Op. Att'y Gen., 2018 WL 3698382 (S.C.A.G. July 20, 2018). We noted counties have authority under state law to operate sewer systems and to collect service and user fees for providing those services. Id. However, we determined to be a valid fee, rather than a tax which must be uniform, those paying it must receive a benefit. Id. We also included a lengthy discussion of the difference between a tax and a fee. Id. Relying on the Supreme Court's decision in Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984), we determined "taxes should be imposed equally on all properties while assessments should only be on those properties benefitted." Id. As such, we determined,

> this Office believes generally a court will rule that a sewer fee in and of itself cannot be charged as a valid charge to those who receive no benefit. Id.; Op. S.C. Att'y Gen., 2008 WL 5476554 (S.C.A.G. December 3, 2008); Hosp. Ass'n of S.C., Inc. v. County of Charleston, 320 S.C. 219, 231-34, 464 S.E.2d 113, 122 (1995); J.K. Construction. Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999); Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984); and pursuant to the use of "rendered" in § 6-15-60. Moreover, we believe that a court will generally find that sewer connection fees are a service charge and that they offer no benefit to those properties not using the sewer service, such as properties that already have a septic system or other alternative septic treatment system. As such, this Office believes a court will find that sewer connection fees cannot be imposed where they offer no benefit pursuant to the Supreme Court's ruling in Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). See also C.R. Campbell Const. Co. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437 (1997) (citing Brown v. County of Horry, 308 S.C. 180, 417 S.C.2d 565 (1992)).

> from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed.

S.C. Const. art. X, § 6 (emphasis added).

According to your letter, the District imposed what you describe as a tax rather than an assessment or a fee. As our Supreme Court explained in Celanese Corporation v. Strange, 272 S.C. 399, 401–02, 252 S.E.2d 137, 138 (1979):

> The distinction between a tax and a special assessment was stated in Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1916), as follows:
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> > "It is very true that in popular parlance, and even in legislative enactments, assessments are frequently called taxes, but courts will look behind mere words to find the real meaning. Taxes, in the strict sense of the word, are imposed upon all property, both real and personal, for the maintenance of the government, or some division thereof, while assessments are laid only on the property to be benefitted by the proposed improvements. This is the vital distinction running through all the cases." 88 S.E. at 130.

Therefore, courts will look beyond terms used to determine if the imposition is a tax. In this instance, your letter explains all property within the district, original and annexed, is charged 8.6 mils. As such, it appears to us to be tax. As a tax, it presumably benefits the District as a whole rather than individual property owners. However, your concern is that some property owners receive no benefit.

As we stated in a prior opinion, "It is not necessary . . . that there be a coequal benefit for every tax dollar exacted." Op. Att'y Gen., 1969 WL 10646 (S.C.A.G. Mar. 3,1969). Moreover, the Supreme Court in Davis v. County of Greenville, 313 S.C. 459, 464, 443 S.E.2d 383, 386 (1994) addressed a similar issue of whether a county could tax all residents the same while providing certain services only in the unincorporated areas of the county. The Court cited to section 6 of article X of the South Carolina Constitution and explained: "The plain language of Article X, § 6 does not impose uniformity on the distribution of taxes. Under Article X, § 6, uniformity is obtained when property taxes are levied equally within the county." Id. at 464, 443 S.E.2d at 386 (citing Charleston County Aviation Auth. v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982)). As such, we believe the District is required to impose the same tax throughout the District regardless of whether any particular homeowner receives a benefit.

Conclusion

Based on your letter, we presume the sewer district you reference is the Spartanburg Sanitary Sewer District. If so, in accordance with the District's enabling legislation, its commission is charged with levying ad valorem taxes on all property located in the District sufficient for the payment of principal and interest on its bonds in addition to administrative, maintenance, and operating expenses. While our prior opinions conclude residents must receive some benefit to be charged sewer service or connection fees, the same is not true for a tax. The South Carolina Constitution requires the uniform imposition of ad valorem taxes, but our Supreme Court made

clear that uniformity is not required in the distribution of taxes. In our view, the millage imposed by the District as described in your letter is most likely a tax rather than a fee. As such, while some residents of the District may not receive the same services as others, the taxes imposed must be uniform.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General