HENRY MCMASTER
ATTORNEY GENERAL

October 7, 2009

The Honorable John Wade
Mayor, Town of Six Mile
Post Office Box 429
Six Mile, South Carolina 29682

Dear Mayor Wade:

We received your letter requesting an opinion of this Office concerning the operation of the Town of Six Mile's (the "Town's") Volunteer Fire Department (the "Fire Department"). In your letter, you provided the following information:

> The Town of Six Mile houses and operates a Volunteer Fire Department which was created by Ordinance on July 4, 1975 . . .
>
> The County of Pickens created Fire Protection Districts by Ordinance June 17, 1991 . . .
>
> The Town of Six Mile provides fire protection for the area established by County Ordinance. In the past the County contracted with the Town for these services. For the past three years the County has refused to sign the contract but the Town has continued to provide the services.

Along with your request letter, you included a copy of the Town's ordinance establishing the Fire Department and two County ordinances establishing Fire Protection Districts. Based on these ordinances, you ask the following questions:

> 1. Who has the final authority to appoint the Fire Chief?
> 2. Who has the final authority to enter into agreements with other fire fighting districts ie mutual aid, automatic response, etc.?
> 3. Who has the final authority to approve the fire department budget?
> 4. Who has the final authority on the collection and the holding of fire department funds?
> 5. Who has the final authority to increase fees/taxes to operate the fire department?

> 6. The County requires the Town put purchases of equipment (trucks) in the County/Fire District's name. Is this proper and/or legal?

Law/Analysis

Section 5-7-30 of the South Carolina Code (Supp. 2008) gives municipalities the power to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it . . . ." While this provision does not specifically give municipalities the authority to provide fire protection services to their residents, our Supreme Court held that providing fire service promotes the security, health, order, and general welfare of municipalities as contemplated by section 5-7-30. See Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 227, 464 S.E.2d 113, 118 (1995).

As you state in your letter, the Town of Six Mile (the "Town") established its Fire Department by ordinance in 1975 to provide fire protection "within the limits of the Town of Six Mile and the surrounding area for a distance of five (5) miles." Based on section 5-7-30, the Town unquestionable had the authority to create the Fire Department.

According to the Pickens County (the "County") ordinances you provided along with your request, we understand that the County created the Six Mile Area Fire Protection District (the "District"), along with several other fire protection districts, pursuant to chapter 19 of title 4 of the South Carolina Code. Section 4-19-10 of the South Carolina Code (1986) gives counties the general authority to provide fire protection services within their boundaries. Subsection (b) of this provision provides for the specific area within a county in which the county can provide such service. This provision states that each county has the authority

> [t]o designate, subject to the provisions of § 4-19-20, the areas of the county where fire protection service may be furnished by the county under the provisions of this chapter (referred to in this chapter as service areas); provided, however, that these service areas shall exclude those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.

S.C. Code Ann. § 4-19-10 (emphasis added). According to this provision, a county is prohibited from providing fire protection service to areas in which a political subdivision, including a

municipality, already furnishes fire protection. Thus, clearly a county would be prohibited from providing fire service within a municipality's corporate limits if that municipality currently provided such service, unless the county enters into an agreement with the municipality.

In City of Darlington v. Kilgo, 302 S.C. 40, 393 S.E.2d 376 (1990), our Supreme Court addressed a municipality's authority to continue to provide fire protection services outside of its municipal limits when a county wishes to provide fire protection services to that same area. The Court initially noted that municipalities have authority pursuant to section 5-7-60 of the South Carolina Code (2004) to provide fire service outside their corporate limits by contract. Id. at 43, 393 S.E.2d at 378. The Court continued by stating that

> S.C.Code § 4-19-10(b) protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in the absence of an agreement, newly created county fire districts must exclude areas served by cities under contract. Since the legislature did not qualify the nature or extent of the "fire protection services . . . offered," this Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a "service area."

Id. As such, the Court held that areas of the county previously served under contract by a municipality could not be included in any county district plan without a prior agreement with the municipality. Id. However, the Court clarified:

> It is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district. This provision does not embody veto power, but allows both entities to furnish service with a determination of how the costs thereof shall be shared.

Id. at 44-45, 393 S.E.2d at 379.

Subsequent opinions of the Court clarified that a contract between the municipality and the individual or entity receiving fire protection service must be in existence for its holding in Kilgo to apply. See Carolina Power & Light Co. v. Darlington County, 315 S.C. 5, 431 S.E.2d 580 (1993)("The statutes as interpreted in Kilgo, supra, clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in Kilgo, the legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district. By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established. The use of some public authorization or ordinance by the appropriate municipal government is critical to put a county on notice, and to insure that there is no inclusion of an area already receiving

fire service."); City of Spartanburg v. County of Spartanburg, 303 S.C. 393, 401 S.E.2d 158 (1991).

As we previously stated, the Town established its Fire Department in 1975, prior to the establishment of the District. According to the Town ordinance, the Fire Department is to serve the Town and "the surrounding area for a distance of five miles." We are not aware of whether the Town has contracts with those to which it provides service in areas outside of its corporate limits, but if it does, the County would be prohibited from providing service to those individuals and entities without entering into an agreement with the Town.

In your letter, you also informed us that the Town provides fire protection to other areas of the County. You state that the County previously contracted with the Town to provide serve to the District, but that for the past three years the County refused to sign a contract with the Town. Section 5-7-60 of the South Carolina Code (2004) not only allows municipalities to contract with individuals outside its corporate limits, but also allows municipalities to contract with other political subdivisions to provide fire protection service. Thus, the Town has the authority to enter into an agreement with the County to provide fire protection in the District. However, outside of the contract, section 5-7-60 does not give the County any additional authority over the Fire Department.

With the above information in mind, we now address your six specific questions. First, you ask who has the final authority to appoint the Fire Chief. According to the Town's ordinance, "[t]he Chief shall be appointed by the Town Council . . . ." Thus, we presume the Town's council has the authority to appoint the Fire Chief for the Fire Department. However, the Town would have no authority over the appointment of District Fire Chief.

Next, you ask who has the final authority to enter into agreements with other fire fighting districts. With regard to the Fire Department, we do not see any provision in the ordinance creating the Fire Department giving the Fire Chief such authority. Thus, we presume such authority remains with the Town. For the same reason, we believe that the authority to approve the Fire Department's budget, collect and hold Fire Department funds, and increase fees/taxes for the operation of the Fire Department all rests with the Town. Nonetheless, with regard to the District, according to the County's ordinance, the District's board of commissioners is responsible for the preparation of the District's budget. The County ordinance specifies that the budget must be approved by the County, which also has the authority pursuant to section 4-19-10 to impose fees and levy taxes to fund the District.

Lastly, you informed us that the County requires the Town to put purchases of equipment in the County/Fire District's name and you question whether this is legal. We find no authority in chapter 19 of title 4 giving counties any legal right to equipment purchased by municipalities for the purpose of fire protection. Thus, absent an agreement between the Town and the County, we do not believe the Town would be required to title its fire equipment in the name of the County or the District.

Conclusion

Municipalities generally have the authority pursuant to section 5-7-30 of the South Carolina Code to provide fire protection services within their boundaries. Moreover, municipalities have the authority to provide fire protection services outside their boundaries by contract pursuant to section 5-7-60 of the South Carolina. According to the Supreme Court in Kilgo a county desiring to provide fire protection service in an area already served by a municipality is precluded from doing so if a contract exists between the municipality and those the municipality is providing service to, unless the county enters into an agreement with the municipality.

The Town has the right to provide and control fire service within its boundaries. In addition, the Town, according to Kilgo, also has the right to provide service to nonresidents with which it has a contract. Because the Town established the Fire Department prior to the County's establishment of the District, if the Town services the area outside its corporate limits pursuant to a contract, the County is prohibited from providing fire service to those residents unless it enters into an agreement with the Town. In addition, we recognize that the Town and the County are free to enter into an agreement by which the Town provides fire service to areas designated by the County. However, absent specific language in an agreement between the Town and the County, we do not believe that by providing fire service to the County, the Town gives up its right to control and operate its Fire Department. To the same end, the Town outside of the agreement, does not gain any additional control over the District.

Very truly yours,

Henry McMaster
Attorney General

Cydney M. Milling

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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