ALAN WILSON
ATTORNEY GENERAL

March 2, 2012

Dennis K. Ray, Fire Chief
Lugoff Fire District
892 Hwy #1 South
Lugoff, South Carolina 29078

Dear Fire Chief Ray:

On behalf of your Board of Commissioners, you have requested an opinion of this Office concerning the approval power vested in the governing body of Kershaw County as that power concerns the levy of taxes for the benefit of the Lugoff Fire District. Specifically, you inquire about the proper interpretation of section 6-11-270 of the South Carolina Code (2004), which requires approval of the district's budget by the county supervisor prior to the levy of taxes.[1] You have asked whether the county's ability to reject the budget prepared by the district's board of commissioners is limited to situations in which the budget violates the law. In addition, you have asked whether home rule affects this analysis.

Law/Analysis

This Office has determined previously that the Lugoff Fire District was established pursuant to sections 59-601 *et seq.* of the South Carolina Code (1962), now codified at title 6, chapter 11, article 1 of the South Carolina Code (2004 & Supp. 2011), and that the Lugoff Fire District is a political subdivision of the State. Letter to Mr. John K. de Loach, Jr., Op. S.C. Att'y Gen. (May 27, 1974); Letter to Mr. John K. de Loach, Jr., Op. S.C. Att'y Gen. No. 3372 (Sept. 12, 1972). Section 6-11-260 of that article provides:

> To meet the expenses of operation and maintenance and the sinking fund and interest charges on the bond issue when the income derived from the works is not sufficient to meet such charges, the board of commissioners of any such electric light, water supply, fire protection or sewerage district shall each year before the levying of taxes make up an estimate or budget for such district, which shall give the estimated maintenance and expenses for the succeeding year and shall submit it to the county supervisor for approval and adoption. Any surplus or deficit that may occur in any one year shall be carried

[1] As you acknowledge in your letter, where the position of county supervisor no longer exists, the duties of the county supervisor have devolved upon the county governing body or an appropriate official thereof. *See, e.g.*, *Hardy v. Francis*, 273 S.C. 677, 679, 259 S.E.2d 115, 116 (1979) ("The duties and responsibilities previously delegated to the office of County Supervisor by Section 14-254 of the 1962 Code devolved upon local government with the passage of Home Rule."); Letter to Joseph H. Earle, Jr., Op. S.C. Att'y Gen. (Nov. 13, 1984) (opining that certain duties previously assigned by law to the county supervisor had become the joint responsibility of the county administrator and county council).

> forward and applied to the next year's account and properly considered in the budget for the expenses of the district for the ensuing year.

(Emphasis added). Section 6-11-270 provides:

> 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.

(Emphasis added).

As sections 6-11-260 and -270 demonstrate, the General Assembly has seen fit to limit the fiscal autonomy of districts created pursuant to sections 6-11-10 *et seq.* in certain respects. Legislation imposing "budgetary oversight" over special purpose districts—including districts governed by elected bodies—is not uncommon in our State. *See, e.g., Thomas v. Cooper River Park and Playground Comm'n*, 322 S.C. 32, 471 S.E.2d 170 (1996); S.C. Code Ann. § 11-27-40(5) (2011) ("In the case of any special purpose district, tax anticipation notes may be authorized by a resolution of its governing body but such action shall be authorized, approved, or ratified by an ordinance of the governing body or governing bodies . . . of the county or counties wherein such special purpose district is situate.").

We have opined previously that unless the context demands a different meaning the term "approval" connotes an intelligent exercise of discretion, not a ministerial duty such as one limited to the determination that a budget "does not exceed the prescribed levy." Letter to H.M. Alexander, Op. S.C. Att'y Gen. (Jan. 17, 1996) (quoting *Oahe Conservancy Subdistrict v. Janklow*, 308 N.W.2d 559 (S.D. 1981)); *see generally Charleston County Parents for Public Schools, Inc. v. Moseley*, 343 S.C. 509, 519, 541 S.E.2d 533, 538 (2001) ("The words used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation."). In the context of the approval of a special purpose district's budget by a legislative delegation, our Supreme Court has explained:

> The power to approve the budget of the commission carries with it the power to disapprove until the budget conforms to the legislative wish . . . .

Gould v. Barton, 256 S.C. 175, 201-202, 181 S.E.2d 662, 674 (1971).[2] In general:

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[2] The *Gould* Court found the breadth of the delegation's authority rendered the approval provision a violation of the constitutional separation of powers. *Id.* In *Bramlette v. Stringer*, 186 S.C. 134, 195 S.E. 257, 261-264 (1938), relied on by *Gould*, the Court highlighted the constitutional distinction between a binding decision by a legislative delegation regarding the execution of a law and a scenario in which the delegation's authority is treated as "supervisory" such that county government remains "free to exercise its own judgment." Because we are presented here with a decision by county government, not by

> The relationship of the courts to the other departments of government is such that they cannot perform executive duties or interfere with the performance of legislative duties. They are not endowed with visitorial powers to approve or disapprove the manner in which county commissioners or supervisors exercise the powers conferred upon them. They cannot reach or control the commissioners in this regard unless in some manner the latter have brought themselves within judicial cognizance. So long as the commissioners act honestly and in good faith and keep within the limits of the powers given them by the law, the courts have no authority to interfere with or control their legitimate discretion. * * *.' 56 Am.Jur.2d, Municipal Corporations, § 192, p. 242.

Letter to The Honorable Dill Blackwell, Op. S.C. Att'y Gen. No. 81-79 (Sept. 17, 1981). For these reasons, it is our opinion that a court would be unlikely to restrict the discretion of the county absent a clear reason for doing so.

We have discovered nothing in the history or context of the relevant Act that would suggest the county's ability to accept or reject the budget is limited to particular reasons. Home rule does not affect our analysis; though home rule did not grant counties additional powers with respect to special purpose districts, counties' powers under sections 6-11-260 and -270 preceded home rule. *See, e.g.*, S.C. Code Ann. § 4-9-80 (1986); Letter to The Honorable G. Ralph Davenport, Jr., Op. S.C. Att'y Gen. No. 94-49 (Aug. 26, 1994).

This is not to say that the county may interfere with matters committed explicitly to the discretion of the district's board of commissioners. For example, section 6-11-100 provides, in relevant part:

> The board of commissioners of such districts shall be bodies politic and shall exercise and enjoy all the rights and privileges of such. They may purchase and build or contract for building such . . . fire protection . . . systems, may lease, own, hold and acquire all necessary equipment and property for such purpose and operate it and may contract with existing light and water companies and municipalities for light, water and fire protection . . . . They may . . . provide for fire protection . . . to citizens of such districts and may require an exact payment of such rates, tolls, rentals and charges as they may establish for the use of . . . fire protection . . . .

In addition, section 6-11-150 provides that after a duly noticed public hearing "the rate shall be passed upon by the board of commissioners and put into effect."[3] These provisions should harmonized with sections 6-11-260 and -270, as they are parts of the same Act. Act No. 734 §§ 4, 6, 7, 1934 S.C. Acts 1292; *Burns v. State Farm Mutual Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989) ("In ascertaining [legislative] intent, statutes which are part of the same Act must be read together.").

Therefore, if—for example—the governing body of a fire district exercises its authority to contract with

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a legislative delegation, we need not be concerned with these constitutional issues.

[3] *Cf.* Letter to Charles L. Denniston, Op. S.C. Att'y Gen. (Sept. 26, 2002) (construing language similar to section 6-11-100 as giving a municipal board of commissioners of public works "the sole responsibility for determining the rates to be charged," without the need for "approval or concurrence" from municipal council).

existing companies for the provision of water or adopts a schedule of charges according to its independent authority to do so, a court would be unlikely to find that the county could later modify or eliminate these items from the annual budget. Nevertheless, a court would be likely to uphold a county's decision to accept or reject the budget as a whole and return it to the governing body of the district for further consideration. *Cf. Gould*, 256 S.C. 175, 181 S.E.2d 662. In this way, the county may act as a check upon the fiscal authority of the board of commissioners without usurping the board's discretion as to any particular funding issue.

Conclusion

In sum, unlike districts governed by a body of appointees, there is no constitutional reason why the elected governing body of a special purpose district could not exercise its taxing power without oversight by the county. *Cf.* Letter to The Honorable David L. Thomas, Op. S.C. Att'y Gen. (Feb. 29, 2012) (concerning a special purpose district governed by an appointed body). Even so, sections 6-11-260 and -270 impose a check upon the power of the Lugoff Fire District's governing body, and these sections do not appear to include any restriction upon the reasons for which the county may reject a budget.

Very truly yours,

Dana E. Hofferber

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Assistant Attorney General

REVIEWED AND APPROVED BY:

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