



ALAN WILSON
ATTORNEY GENERAL

November 15, 2012

Ken Rentiers, Deputy Director
S.C. Department of Natural Resources
P. O. Box 167
Columbia, South Carolina 29202

Dear Mr. Rentiers:

Attorney General Alan Wilson has referred your letter of September 4, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Would South Carolina Soil and Water Conservation Districts be eligible for funding under the South Carolina Rural Infrastructure Act?

Short Answer: Special purpose districts are eligible for funds under the South Carolina Rural Infrastructure Act. Determination of a special purpose district must be done on an individual case-by-case basis. If an individual Soil or Water Conservation District satisfies most of the factors listed below, it is likely a court would find the district to be a special purpose district and therefore eligible for funding under the South Carolina Rural Infrastructure Act.

Law/Analysis: South Carolina Code § 11-50-30(c) specifies the purpose of the South Carolina Rural Infrastructure Authority (hereinafter "Authority") is to "select and assist in financing qualified rural infrastructure by providing loans and other financial assistance to municipalities, counties, special purpose and public service districts, and public works commissions for constructing and improving rural infrastructure facilities." In addition to other such powers, S.C. Code § 11-50-60(A) (Supp. 2010) grants the Authority the power to make loans and provide financial assistance to qualified borrowers.

The South Carolina Rural Infrastructure Act defines a qualified borrower as "any eligible entity which is authorized to construct, operate, or own a qualified project" and an eligible entity as "a municipality, county, special purpose or public service district and public works commission." S.C. Code § 11-50-40(5), (10) (Supp. 2010). A qualified project is defined as "an eligible entity which has been selected by the authority to receive a loan or other financial assistance from the authority to defray an eligible cost." S.C. Code § 11-50-40(11).

In order for the S.C. Soil and Water Conservation District to obtain funding from the Authority, it needs to be both a qualified borrower and an eligible entity, as defined by the statute. If a district is an eligible entity it should meet the definition of a qualified borrower. To be an eligible entity a Soil or Water Conservation District would need to be classified as a special purpose, public service district or a public works commission since it is clearly not a municipality or a county. S.C. Code § 11-50-40. If a Soil or Water Conservation District could meet the elements of a public works commission then it would qualify, but it is more likely to fall within the definition of a special purpose or a public service district.

The terms special purpose and public service districts may be used interchangeably; therefore this Office will focus on special purpose districts in our analysis. Op.. S.C. Atty. Gen., 1984 WL 159938 (Nov. 14, 1984). A public service district, for the purposes of Article 11, Chapter 11 of Title 6 is defined as “any district created by an act of the General Assembly or pursuant to general law and which provides any local governmental power or function including, but not limited to, fire protection, sewerage treatment, water or natural gas distribution, recreation, and means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6. Special purpose districts do not include any state agency, department, commission, or school district.” S.C. Code of Laws § 6-11-1610 (Supp. 1984). For purposes of Article 3, Chapter 11 of Title 6, a public service district is defined as “any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local government function. S.C. Code § 6-11-410 (1976). However, this Office has previously opined such a term as special purpose district is broad and open-ended, and factors should be used to determine if an entity is a special purpose district. The factors in determining whether an entity is a special purpose district include:

- 1) the purpose for which the district was established (single or general);
- 2) whether the entity has corporate powers or duties;
- 3) how the governing body of the entity is chosen;
- 4) whether the entity is empowered to issue revenue or general obligation bonds;
- 5) whether the entity may levy tax assessments;
- 6) whether the entity may issue notes or bonds;
- 7) how the entity was created; and
- 8) whether a county established the entity as a taxing district rather than a special purpose district.

Op.. S.C. Atty. Gen., 1984 WL 159938 (Nov. 14, 1984).

Determination of a special purpose district must be done on an individual case-by-case basis, but a district does not have to meet all the factors for it to be a special purpose district. Id. Since your letter asks in general about Soil and Water Conservation Districts without naming a specific one, this Office can only give a general opinion with a limited analysis of the factors. South Carolina Code § 48-9-10ff outlines the laws concerning and defining Soil and Water Conservation Districts in South Carolina. Using the designations in the law, this Office is able to analyze some of the eight factors. The legislative purpose for Soil and Water Conservation Districts is specific, as outlined in South Carolina Code § 48-9-20. The definition of a Soil or Water Conservation District is “a governmental subdivision of this State, a public body corporate and politic...” S.C. Code § 48-9-30(1). Soil and Water Conservation Districts would likely be determined to have corporate powers based on their ability to sue and be sued, to manage

projects, construct structures, acquire and sell property and other powers as listed in South Carolina Code § 48-9-1270. Additionally, the Department of Natural Resources appoints two commissioners to work with three commissioners for the Watershed Conservation District so that the five commissioners will serve as the governing body. S.C. Code § 48-9-610. The Soil and Water Conservation Districts were created by statute but were not granted the power to tax. S.C. Code § 48-9-20ff. The assessment of these factors would more likely than not support a finding of a special purpose district. If an individual Soil or Water Conservation District satisfies most of the factors, it is likely a court would find the district to be a special purpose district and therefore eligible for funds under the South Carolina Rural Infrastructure Act.

In analyzing the legislative findings, one can deduce the Legislature intended a broad interpretation of the meaning of a special purpose district. Op.. S.C. Atty. Gen., 1984 WL 159938 (Nov. 14, 1984). Special purpose districts should have a purpose other than for general local government and must be distinguishable from a general purpose local government unit. Op.. S.C. Atty. Gen., 1984 WL 159938 (Nov. 14, 1984). It should be noted the South Carolina Supreme Court has previously declared a special purpose district as “concerned primarily with mere conveniences or other matters not so vital to the public welfare.” Mills Mill v. Hawkins, 232 S.C. 515, 524, 103 S.E.2d 14, 17 (1957). As this Office has previously delineated, South Carolina Supreme Court decisions have held airports, bridges, drainage, highway, water, sewer and recreation districts all to be special purpose districts. As long as a public purpose is being served, “almost any type of district short of a local, general purpose government could be a special purpose district,” but there must be a distinction between a taxing district and a special purpose district. Additionally, special purpose districts all tend to have corporate powers. Op.. S.C. Atty. Gen., 1984 WL 159938 (Nov. 14, 1984). There are other South Carolina cases that may be helpful in determining whether an individual district would qualify. One such case notes the only statutory requirements under Article 11, Chapter 11 of Title 6 for a special district are:

- 1) it was created by the General Assembly;
- 2) the creation was before March 7, 1973; and
- 3) it serves a local government function.

Sloan v. Greenville Hosp. System, 388 S.C. 152, 164, 694 S.E.2d 532, 538 (2010). Another case held an airport commission not to be a special purpose district because it had no local government function. Willis Const. Co., Inc. v. Sumter Airport Commission, 308 S.C. 505, 419 S.E.2d 240 (Ct. App. 1992).

Please note each special purpose district is required by statute to notify the Secretary of State and the county auditor of its existence, in addition to filing an annual financial audit with the county auditor. S.C. Code § 6-11-1620, 1650 (1976). Therefore, if any such conservation district holds itself out to be a special purpose district, it should be complying with the statutory requirements of a special purpose district. Additionally, twenty-five landowners may petition South Carolina Department of Natural Resources to be organized into a soil and water conservation district under South Carolina Code § 48-9-510.

Conclusion: Each and every Soil and Water Conservation District would have to be analyzed individually to determine whether it is a special purpose district or not. However, this office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your

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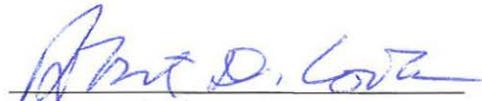
letter, this is only an opinion on how this office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General