

1984 WL 249881 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1984

*1 L. Franklin Elmore, Esquire
McGowan, Keller, Eaton, Brodie & Elmore, P.A.
Post Office Box 1461
Florence, South Carolina 29503

Dear Mr. Elmore:

By your letter of April 10, 1984, you have asked whether the County of Darlington may abolish the Palmetto Rural Fire District, should the County decide to offer county-wide fire protection. You have indicated that the Fire District was created by petition pursuant to [Section 6-11-10 et seq., Code of Laws of South Carolina \(1976\)](#), in November 1976. The Fire District is funded by a special tax on property owners within the District and is not located within any municipality but is located solely in the County of Darlington, according to your letter.

A portion of [Section 4-9-80 of the Code \(1983 Cum. Supp.\)](#) specifies the procedure to be followed in abolishing a public service or special purpose district:

. . . [A]ny such act [of the General Assembly] which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. . . .

This Code section has been discussed by our Supreme Court twice recently. In [Berry v. Weeks](#), Op. No. 22007, filed November 28, 1983, the Court stated, ‘[Section 4-9-80](#) states that preexisting special purpose districts shall continue to function until they are dissolved by Act of the General Assembly after a favorable referendum of the district's voters.’ Advance Sheet No. 33, page 7. In [Michelin Tire Corporation v. Spartanburg County Treasurer et al.](#), Op. No. 22055, filed March 6, 1984, the Court reiterated, ‘Yet, the existence of special purpose districts is protected, even under home rule, until they are dissolved by the General Assembly after a favorable referendum.’ Advance Sheet No. 15, page 9. Clearly, from the statute and the Supreme Court's interpretation thereof, two events must occur to abolish a special purpose district: (1) an act of the General Assembly and (2) a favorable referendum by the electors in the district. Thus, the county's governing body, acting alone, may not abolish such a district. See also [Op. Atty. Gen. No. 77-62](#) (copy enclosed).

By telephone you asked whether a different interpretation of [Section 4-9-80](#) would be reached for a district created by petition pursuant to [Section 6-11-20](#), rather than by an act of the General Assembly (as in [Berry](#) and in [Michelin Tire Corporation](#)). It is the opinion of this Office that the manner in which a district was created would not affect the applicability of [Section 4-9-80](#). No other method of abolition of a special purpose district may be found in the Code, and there are no provisions within [Section 4-9-80](#) limiting its applicability to only those special purpose districts created by act of the General Assembly. As you pointed out, the electors of the District voted to create the District; it should also be pointed out that in addition to an act of the General Assembly, the favorable vote of those same electors is required to abolish the District. Thus, there is no reason to treat the Palmetto Rural Fire District in a manner different from a special purpose district created by an act of the General Assembly.

*2 I hope that this answer satisfactorily responds to your questions. If you need clarification or additional information, please call me at 758-3970.

Sincerely,

Patricia D. Petway
Staff Attorney

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