

1980 WL 120754 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 27, 1980

*1 Mr. Johnson Craig
Chairman
Greenwood Metropolitan Commission
Post Office Box 775
Greenwood, South Carolina 29646

Dear Mr. Craig:

You have requested four opinions from this Office concerning the Greenwood Metropolitan Commission (hereinafter 'Commission'). We have received a letter from the attorneys for the Commission advising us of their research on these matters.

You have asked, first, whether the Commission has continuing authority to enlarge the Greenwood Metropolitan District (hereinafter 'District') under §§ 2A and 2B of Act No. 441 of 1959 as amended by Act No. 1028 of 1960. It is the opinion of this Office that the Commission still has this authority, even though the County Council also has certain powers to enlarge the District, as provided in § 6-11-410, [et seq.](#), [Code of Laws of South Carolina](#), 1976 (as amended). These two statutes are not inconsistent. They merely provide several means by which the District may be enlarged. Therefore, it is the opinion of this Office that the Commission may still exercise the power to enlarge the District pursuant to §§ 2A and 2B of Act No. 441 (as amended).

Second, you have asked whether the Commission has the continuing authority under §§ 15, 15A, and 16 of Act No. 441 to create sewer subdistricts within the District. Each subdistrict is separately incorporated; each is a separate body politic and corporate; and each has the power itself to levy taxes through a subdistrict committee to pay for the cost of constructing the sewer improvements located therein. § 16, Act No. 441. In addition to this subdistrict tax levy, the Commission has the power to levy a tax on all taxable property within the entire District sufficient to operate and maintain the sewerage system throughout the District. It is possible that the levy of a tax by one subdistrict at a level different from the levy in another subdistrict would constitute a violation of [Article X, Sections 1 and 5 of the South Carolina Constitution](#), in that the tax levy throughout the District would not be uniform. [Celanese Corp. v. Strange](#), 272 S.C. 399, 252 S.E.2d 137 (1979). However, in light of the fact that each subdistrict is a separate taxing district with its own governing committee, each such subdistrict would most likely be deemed a separate political subdivision. See [Lakewood Park Cemetery Ass'n. v. Metropolitan St. Louis Sewer District](#), 396 S.W.2d 744, 745 (Mo.); see also [Dugas v. Beauregard](#), 155 Conn. 573, 236 A.2d 87 (1967). Since the taxes would be uniform within each subdistrict which are themselves political subdivisions, it is the opinion of this Office that such subdistricts are most likely still permitted by the Constitution and thus may still be created by the Commission. However, this question has not been expressly decided by the Supreme Court and so, for that reason, it is not entirely free from doubt.

Third, you asked whether the Greenwood County Council had the authority under the Home Rule Act to create special tax districts for sewage collection and treatment within the area constituting the Greenwood Metropolitan District. It is the opinion of this Office that the Council does have that authority, subject to existing law applicable to Greenwood County. The power to create special tax districts for sewage treatment and disposal is granted to county councils generally by § 4-9-30(5), [Code of Laws of South Carolina](#), 1976. However, § 13 of Act No. 441 provides that 'no sewer system within the district shall hereafter be constructed or enlarged, except under the supervision of Greenwood Metropolitan District Commission.' This provision of Act No. 441 has not been repealed, nor does it conflict with any provision of the Home Rule Act. Therefore, it is our opinion that any sewage system constructed by a special tax districts created by the Greenwood County Council for sewage treatment and collection lying within the area of the District must be constructed (or enlarged) under the supervision of the Commission. It

should be noted that [Article VIII, § 16 of the South Carolina Constitution](#) requires a favorable vote in a county wide referendum before a county may acquire, construct or operate a sewer utility. [Murphree v. Mottel, 267 S.C. 80, 226 S.E.2d 36 \(1976\)](#).

*2 Fourth, you have asked whether the Greenwood County Council has the authority to amend the provisions of Act No. 441. It is our opinion that the County Council does not have that authority. There is no provision in the Home Rule Act whereby county councils may amend acts of the General Assembly relating to special purpose districts. See [§ 4-9-80, Code of Laws of South Carolina](#), 1976 (as amended). However, the County Councils are given certain limited powers to alter boundaries, § 6-11-10, [et seq., supra](#), to authorize issuance of bonds § 6-11-490, [et seq., supra](#), to change the size of the governing commission, § 6-11-610, [et seq., supra](#) and to authorize the increase of tax millages, § 6-11-275, [supra](#). However, apart from these and possibly other express statutory grants of authority to the county councils to make changes relating to special purpose districts, county councils are not authorized to amend the acts creating such districts.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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