1976 S.C. Op. Atty. Gen. 242 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4402, 1976 WL 23020

Office of the Attorney General

State of South Carolina
Opinion No. 4402
July 26, 1976

***1** Joseph H. Earle, Jr., Esquire
County Attorney
301 College Street
Greenville, South Carolina 29601

Dear Mr. Earle:
You have requested an opinion from this Office as to whether or not the Greenville County Recreation Commission can construct a recreational park in the County by making use of a $680,000.00 surplus which presently exists in its operating funds. In my opinion, it cannot.

That surplus exists by virtue of the 5 ½ mill tax levy provided for in Section 5, Item (13) of Act No. 1329 of 1968 [55 STAT. 3113 (1968)], as last amended by Act No. 472 of 1973 [58 STAT. 818 (1973)]. That provision specifies that:
[s]uch tax [to meet the cost of operating and maintaining parks, playgrounds and recreational facilities] shall be levied by the county auditor and collected by the county treasurer who shall keep it in a separate fund applicable solely to the purpose for which it is levied. [Emphasis added.]

The legislative intent is unambiguous, then, that the tax authorized by Item (13) is to be used only for operation and maintenance and not for construction of additional recreational facilities.

As to alternatives, if, as you state, the one provided by Act No. 1189 of 1974 [58 STAT. 2787 (1974)] is not attractive, Act No. 1329 of 1968, as amended, could be amended either to delete the restrictive language of Item (13) or to expressly authorize the transfer of surplus funds from one account to another. Although the South Carolina Supreme Court has not yet declared that local legislation altering special purpose districts in existence on May 7, 1973, violates Article VIII, Section 7 of the State Constitution, nevertheless, I believe that such legislation would most probably be invalidated by that Court based on its interpretations of Article VIII to date. See, e.g., Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975); cf., Thorne v. Seabrook, 264 S.C. 503, 216 S.E.2d 177 (1975). Act No. 283 of 1975, the 'home rule' legislation, however, does recognize that existing special purpose districts will continue to perform their statutory functions prescribed in laws creating such districts or authorities 'except as they may be modified by act of the General Assembly' [§ 14–3705]; the authorization provided by that language of Act No. 283 of 1975 would not, of course, determine the constitutionality of such modifications.
With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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