



ALAN WILSON
ATTORNEY GENERAL

July 21, 2025

The Honorable Cody T. Mitchell
Member
South Carolina House of Representatives
Post Office Drawer 1408
Hartsville, SC 29550

Dear Representative Mitchell:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

The special purpose district in question is the Commission for Hartsville Township, Darlington County, to be known as the Hartsville Township Community Center Building Commission (Commission). The Commission was created by the General Assembly in Act 1046 of 1934 following a favorable referendum vote of the qualified electors of Hartsville Township simultaneously authorizing the Board of County Directors of Darlington County to issue general obligation bonds in the amount of one hundred thousand dollars for the Commission to acquire a site in the town of Hartsville, proceed to construct and equip a community center on that site, and manage the facility thereafter. Commission members were appointed by the Governor on the recommendation of the Darlington County Legislative Delegation.

Act 1046 of 1934 noted above was repealed by the General Assembly in 1961 in Act 259 of 1961. The 1961 Act, codified as Article 21, Chapter 4, Title 51 of the Code of Laws of South Carolina 1962, reconstitutes the Commission providing its membership, powers and duties with respect to the facility constructed and operated pursuant to Act 1046 of 1934. Commission members pursuant to this new 1961 enactment are appointed in the same manner as the Commission appointed in the repealed Act 1046 of 1934. In addition, the Act 259 Commission is given the power to direct the Darlington County Auditor to impose millage on the taxable property in Hartsville Township.

The most recent legislative change to the Commission occurred in Act 235 of 2024, increasing the membership of the Commission from three to five members and provided that a weighted vote of the Darlington County Legislative Delegation shall designate the Commission Chairman.

...

The question I have regarding the Commission discussed above is as follows:

Does the Hartsville Township Community Center Building Commission, as currently constituted, have the power to authorize and have issued general obligation bonds to raise funds for the building or buildings under its management?

Law/Analysis

It is this Office's opinion that the Hartsville Community Center Building Commission (the "Commission") does not have the authority to issue general obligation bonds on its own because it is an appointive body. As noted in your letter, the Commission is composed of five individuals who are "appointed and commissioned by the Governor upon the recommendation of a weighted majority of the Darlington County Legislative Delegation." 2024 Act No. 235, § 2. The concern is that the Commission, as a purely appointive body, could not issue general obligation bonds to raise funds without offending Article X, § 5 of the South Carolina Constitution which prohibits taxation without representation. See S.C. Const. art. X, § 5 ("No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled."). In Crow v. McAlpine, 277 S.C. 240, 245, 285 S.E.2d 355, 358 (1981), the South Carolina Supreme Court held this provision prohibits the General Assembly from "delegating the unrestricted power of taxation to an appointive body."

Article X, Section 5 recognizes that the power to levy taxes rests with the people. As such, we believe it constitutes an implied limitation upon the power of the General Assembly to delegate the taxing power. Where the power is delegated to a body composed of persons not assented to by the people nor subject to the supervisory control of a body chosen by the people, this constitutional restriction is violated.

Id. at 244, 285 S.E.2d at 358; see also Weaver v. Recreation Dist., 328 S.C. 83, 87, 492 S.E.2d 79, 81–82 (1997) (holding delegating "complete discretion to determine its annual budget, and to levy anywhere from one to five mills taxes to meet its budget" to an appointed recreation commission was impermissible under Article X, § 5).

This prohibition on delegating taxing authority is applicable to the authority to issue general obligation debt as well. Article X, § 14 of the South Carolina Constitution grants political subdivisions the power to incur bonded indebtedness, including by issuing general obligation debt. “General obligation debt” is defined to mean “any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.” S.C. Const. art. X, § 14(3); see also City of Beaufort v. Griffin, 275 S.C. 603, 605, 274 S.E.2d 301, 303 (1981) (“The general obligation debt aspect of bonded indebtedness, as illustrated by the emphasized language in Article X, Section 14, may thus be understood as indebtedness lawfully contracted for governmental purposes and ultimately secured by taxes on the property within the political entity.”). Because general obligation debt is secured by an entity’s taxing power, an appointive body lacking the authority to tax would likewise lack the authority to issue this type of debt on its own.

However, the General Assembly subsequently established mechanisms for setting and increasing a special purpose district’s¹ millage levy and issuing general obligation bonds even where the district is governed by an appointed body. Following the first Weaver decision cited above, the General Assembly adopted S.C. Code § 6-11-271. In a second decision also captioned Weaver v. Recreation District, 431 S.C. 357, 848 S.E.2d 760 (2020), Chief Justice Beatty summarized the statute’s structure as follows:

Subsection (A) defines the term “special purpose district” to mean any special purpose district or public service authority, however named, created by the General Assembly prior to March 7, 1973. Id. § 6-11-271(A).

Subsections (B) and (C) apply only to special purpose districts whose “governing bodies ... are not elected but are presently authorized by law to levy [millage] for operations and maintenance.” Id. § 6-11-271(B)(1), (C)(1). Subsection (B) concerns districts that were then authorized to levy millage up to a certain limit, and (C) concerns districts then having no limit as to the millage amount. Id. The General Assembly instructed that, beginning in fiscal year 1999, “[t]here must be

¹ The local legislation establishing the Commission was amended in 1993 to clarify that it is a special purpose district. See Act No. 211 (of 1992), 1993 S.C. Acts 3456.

The first section of an article added in Section 1 of Act 259 of 1961, is amended to read:

"Section 1. There is created and established a special purpose district to be governed by a commission for Hartsville Township, Darlington County; this commission is a body politic with the powers and duties contained in this act and is to be known as the Hartsville Community Center Building Commission."

(emphasis added).

levied annually in each special purpose district described” (i.e., those described in (B)(1) and (C)(1)), tax millage equal to the amount imposed in fiscal year 1998. Id. § 6-11-271(B)(2), (C)(2).

The General Assembly outlined several methods for a special purpose district to attempt to alter this tax millage. Subsection (D) provides a special purpose district may request that the county election commission conduct a referendum proposing a modification of the millage. Id. § 6-11-271(D). If the voters approve, the “modification in tax millage shall remain effective until changed in a manner provided by law.” Id.

Subsection (E) authorizes all special purpose districts located wholly in one county to modify their millage limits, “provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted.” Id. § 6-11-271(E)(1) (emphasis added). However, any modification is only temporary, as the General Assembly stipulated that “[a]ny increase in millage effectuated pursuant to this subsection is effective for only one year.” Id. (emphasis added).

Id. at 361–62, 848 S.E.2d at 762. With the General Assembly approving the millage rates in subsections (B) and (C), the voters approving the millage increases in subsection (D), and the county governing body approving the one year millage increase in subsection (E), each approval would result from either an elected representative body or direct consent of the people. In analyzing subsection (E), the court found the General Assembly’s intent was to require a special purpose district to gain “the approval of the elected governing body of the county ... before any modification in millage may occur.” Id. at 367, 848 S.E.2d at 765.

Because no change may actually occur without the express approval of county council, an elected body, the prohibition against taxation without representation is not implicated here, as any rate change is, in fact, subject to the supervision of an elected body, and no modification may be made without the approval of that elected body.

Id. (emphasis added). Said differently, the Court held that, by requiring the approval of an elected body before a change in taxation is authorized, the General Assembly crafted a solution that permitted a change to an unelected public service district’s millage level consistent with Article X, § 5 of the South Carolina Constitution.

The General Assembly established a similar procedure whereby special purpose districts can issue general obligation debt after gaining approval of governing body of the county.

July 21, 2025

If, in order to provide for the cost of any improvements, it is necessary that general obligation bonds be issued the county board shall be empowered at any time to authorize the applicable commission to issue general obligation bonds of the special purpose district. Any county board may, but shall not be required to, condition the issuance of general obligation bonds upon the result of a special election held in the special purpose district as reconstituted and such election shall be conducted in the manner and under the procedure made applicable to the issuance of general obligation bonds of the counties of the State by the provisions of Chapter 15, Title 4.

S.C. Code § 6-11-490 (emphasis added). Like the approval requirement for millage increases in section 6-11-271(E), the county council's approval is a necessary condition for the special purpose district to issue general obligation bonds. If the Commission were to obtain county council's approval, a court would likely hold it could use this procedure to raise funds for improvements without violating Article X, § 5 of the South Carolina Constitution.

Conclusion

It is this Office's opinion that the Hartsville Community Center Building Commission (the "Commission") does not have the authority to issue general obligation bonds on its own because it is an appointive body. As noted in your letter, the Commission is composed of five individuals who are "appointed and commissioned by the Governor upon the recommendation of a weighted majority of the Darlington County Legislative Delegation." 2024 Act No. 235, § 2. The concern is that the Commission, as a purely appointive body, could not issue general obligation bonds to raise funds without offending Article X, § 5 of the South Carolina Constitution which prohibits taxation without representation. However, if the Commission were to obtain county council's authorization to issue general obligation bonds of the special purpose district under S.C. Code § 6-11-490, a court would likely hold this procedure would allow it to raise funds for improvements without violating Article X, § 5 of the South Carolina Constitution.

Sincerely,



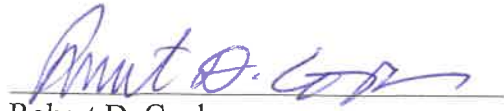
Matthew Houck
Assistant Attorney General

The Honorable Cody T. Mitchell

Page 6

July 21, 2025

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General