



ALAN WILSON
ATTORNEY GENERAL

July 16, 2024

Gary M. Mixon
Sumter County Administrator
13 East Canal Street
Sumter, South Carolina 29150

Dear Mr. Mixon:

We received your letter requesting an attorney general's opinion as to the creation of a special tax district to provide maintenance on private roads as a follow-up to our April 30, 2024 opinion. Moreover, you inquire as to whether "the Sumter County Public Works Department can perform the work requested by the special tax district administrators and then the special tax district reimburse Sumter County for the actual cost of the personnel and material and FEMA-approved costs for equipment used to perform the work."

Law/Analysis

According to the South Carolina Constitution, counties have "the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided." S.C. Const. art. VIII, § 7 (2009). Moreover, section 4-9-30(5)(a) of the South Carolina Code (2021) permits counties to create special tax districts for

appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

(emphasis added). As such, Sumter County (the "County") may create a special tax district for the purpose of constructing and maintaining roads. Section 4-9-30(a) specifies how these special tax districts may be created including by referendum when at least fifteen percent of the electors in the proposed special tax district petition the county council or by petition if signed by at least seventy-five percent of the resident freeholders owning at least seventy-five percent to the property in the special tax district. Thus, presuming the County meets these requirements, it may form a special tax district to fund roads.

Nonetheless, according to your letter, the roads the County wishes to fund through the implementation of a special tax district are private roads. Moreover, there is no indication in your letter that these roads will be dedicated to public use. As we explained in our prior opinion to you, “public funds generally, may not be used to maintain private roads as that would not serve a public purpose.” Op. Att’y Gen., 2024 WL 2034557 (S.C.A.G. Apr. 30, 2024); see also S.C. Const. art. X, § 5 (“Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.”). The taxes collected pursuant to a special tax district are public funds even though they are collected from only a portion of the residents of a county and used for a specific purpose. As we explained in a prior opinion,

in the absence of a statutory definition, the terms ‘public funds’ and ‘revenue’ are interchangeable, and ‘[t]he fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them State funds’ 63 Am.Jur.2d 391, 394. In confronting an identical situation, the Supreme Court of Virginia observed that ‘[t]he phrase ‘public money’, in the absence of a statute defining it, must be construed according to its usual meaning and common acceptance Public funds are those moneys belonging to the State or to any city, county, or political subdivision of the State, _____ or more specifically, taxes, customs, and moneys raised by the operation of law for the support of the government or for the discharge of its obligations.’ Beckner v. Commonwealth, 174 Va. 454, 5 S.E.2d 525, 527 (1939).

Op. Att’y Gen., 1978 WL 34963 (S.C.A.G. June 27, 1978). As such, collecting taxes from certain property owners for a particular purpose does not negate the fact they are public funds and must be used for public purposes. Therefore, if the County takes the steps necessary to create a special tax district, we advise the county to use the revenue generated as a result of its creation solely for public purposes.

You also inquire as to whether it is possible for the Sumter County Public Works Department to perform road construction and maintenance and be reimbursed by the special tax district. In a 2015 opinion, we determined special tax districts formed pursuant to section 4-9-30(5)(a) are part of the county in which they are created and not their own separate political subdivision. Op. Att’y Gen., 2015 WL 1870567 (S.C.A.G. Apr. 9, 2015). Consequently, we believe the County’s public works department may perform the construction and maintenance for roads funded by a special tax district.

Conclusion

While we believe the County may, following the proper procedures, create a special tax district for purposes of funding roads within the district, we do not believe such a tax can be levied and collected for the construction and maintenance of private roads. However, if these roads are public rather than private roads, because the special tax district is part of the County, we believe the

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County's public works department could construct and maintain the roads and be reimbursed by the special tax district.

Sincerely,

A handwritten signature in black ink, appearing to read "Cydney Milling".

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook
Solicitor General