



HENRY McMASTER
ATTORNEY GENERAL

October 5, 2006

The Honorable George H. Bailey
Member, House of Representatives
Post Office Box 633
St. George, South Carolina 29477

Dear Representative Bailey:

We issue this opinion in response to your letter concerning the imposition of county impact fees by the South Carolina General Assembly. In your letter, you informed us that you recently met with members of the Dorchester County Council ("County Council") and discussed the imposition of impact fees on new construction of homes and commercial businesses. You state:

My question, can we, the Legislature, pass a law to impose impact fees on future homes and businesses within Dorchester County or should this be a matter that the Dorchester County Council can do by ordinance?

Based on our analysis below, the Legislature's imposition of impact fees in a particular county would constitute special legislation prohibited by article VIII, section 7 of the South Carolina Constitution. Thus, the Legislature may not impose such fees. However, County Council may impose development impact fees provided it does so in compliance with general law.

Law/Analysis

As our courts continually recognize over the years, the General Assembly, per its plenary powers, may enact any law not prohibited by the South Carolina or United States Constitutions. See, eg., Unisys Corp. v. South Carolina Budget & Control Bd. Div. of Gen. Serv. Info. Tech. Mgmt. Office, 346 S.C. 158, 169, 551 S.E.2d 263, 269 (2001); Johnson v. Piedmont Mun. Power Agency, 277 S.C. 345, 350, 287 S.E.2d 476, 479 (1982). Article VIII, section 7 of the South Carolina Constitution (1976) provides as follows with regard to counties:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services

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provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

(emphasis added). This constitutional provision was passed as part of the Home Rule Amendments to the South Carolina Constitution. With regard to the last sentence of this provision, our Supreme Court in Richardson v. McCutchen, 278 S.C. 117, 119, 292 S.E.2d 787, 788 (1982), citing Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), stated: "the prohibition means that no law may be passed concerning a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties."

Your request questions whether or not the General Assembly may pass a law to impose impact fees within a particular county. Thus, in our opinion, the passage of such legislation by the General Assembly would constitute special legislation prohibited by article VIII, section 7 of the South Carolina Constitution.

On the other hand, County Council, with some restrictions, has authority to impose impact fees on new development. In accordance with article VIII, section 7 of the South Carolina Constitution, the Legislature passed section 4-9-30 of the South Carolina Code designating certain powers to counties. Included in these powers is the power to "to assess property and levy ad valorem property taxes and uniform service charges . . ." S.C. Code Ann. § 4-9-30(5)(a) (Supp. 2005). Our Supreme Court interpreted a county's authority to impose service charges pursuant to section 4-6-30 as follows:

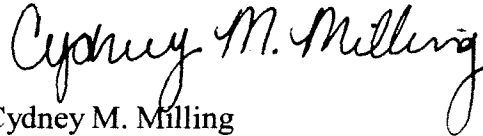
Without ambiguity and by its express terms, this section provides counties with additional and supplemental methods for funding improvements. This is consistent with the intention of the drafters of the Home Rule Act to provide county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would have to be borne by taxpayers generally.

Brown v. County of Horry, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992). Moreover, the Court added: "Under Home Rule, a county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided." Id. at 184, 417 S.E.2d at 567. Therefore, counties have the general authority to impose services charges. However, sections 4-9-25 and 4-9-30 of the South Carolina Code (Supp. 2005) provide a county's authority is limited by the Constitution and general laws of the State.

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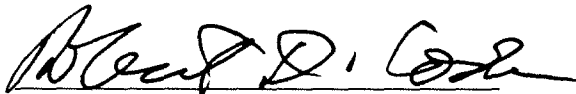
Chapter 1 of title 6 of the South Carolina Code contains the South Carolina Development Impact Fee Act (the "Development Impact Fee Act"), which governs the imposition of impact fees by counties and municipalities. Section 6-1-930 of the South Carolina Code (2004) provides the criteria for imposing such fees and states "[a] governmental entity may not impose an impact fee, regardless of how it is designated, except as provided in this article." In addition, this provision also indicates the governmental entity seeking to impose a fee must do so by ordinance. S.C. Code Ann. § 6-1-930(B)(1). In this opinion, we will not address all the criteria provided under the Development Impact Fee Act. However, we alert you and County Council to its existence and inform you that the County must comply with these provisions when imposes development impact fees.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General