

September 19, 2007

Sean P. Thornton, Esquire
Colleton County Attorney
Post Office Box 157
Walterboro, South Carolina 29488

Dear Mr. Thornton:

We understand from your letter that you are the attorney for Colleton County (the "County") and wish to request an opinion of this Office on behalf of the County. In your letter, you provided the following information:

In 1993 Colleton County enacted ordinance 93-O-17, which consolidated fire protection services into a single county-wide fire district. At that time, there were numerous volunteer type fire departments operating throughout the county. As part of that Ordinance, the new fire district took control of equipment and fire stations that were operating at that time. Over the years, Colleton County has purchased or leased the land and buildings for the majority of its fire stations. However, there are still a few stations where no new property arrangements have been made.

Based on this information, Colleton County desires an opinion addressing "whether or not Colleton County, by way of the 1993 ordinance, has the authority to keep possession/ownership of the buildings and or equipment used by those few stations where no new lease or purchase arrangements have been made as to that property."

Law/Analysis

You provided us with a copy of ordinance 93-O-17, which establishes the Colleton County Fire Protection and Rescue Service District (the "District") as a special tax district for the purpose of financing and providing fire protection and rescue services to all areas of Colleton County including the municipality of Cottageville. As the ordinance indicates, section 4-9-30(5) of the South Carolina Code (Supp. 2006) provides counties generally with the authority to provide fire protection services and the authority to create a special tax district for this purpose. Furthermore, chapter 19 of title 4 specifically governs a county's ability to operate and maintain a system of fire

Mr. Thornton
Page 2
September 19, 2007

protection and includes a provision under section 4-19-20 allowing counties to establish fire protection districts by ordinance. S.C. Code Ann. § 4-19-20(4) (Supp. 2006). Thus, in accordance with these provisions, clearly the County has authority to provide fire protection to its residents by the establishment of a fire service district.

To determine whether in providing fire protection services the County may take ownership of the buildings and equipment previously used by volunteer fire departments, we look first to the Ordinance. The Ordinance states:

By authority of the council, the new district is established as the successor in title and interest of the fire protection districts in respect of every right, entitlement and obligation of the fire protection district, and all such rights, entitlement and obligations of the fire protection districts shall continue in the new district with no break in continuity.

Arguably, this provision may be read to allow the District to assume the assets and liabilities of the existing fire districts operating within the County. However, in a conversation with our Office, you indicated the volunteer fire departments existing at the time of the Ordinance were not County entities, but rather were private organizations, most of which operated as nonprofit entities. Looking outside of the Ordinance to the law authorizing counties to provide fire protection services, we do not find a provision allowing counties to take possession or ownership of the assets of a private entity as part of providing fire protection services. Thus, regardless of whether the Ordinance allows the County to take possession or ownership of the assets of a volunteer fire department, we find no statutory authority allowing the County to take such action.

Certainly, as you mentioned in your letter, the County may enter into agreements with these local fire departments to purchase or lease their land, buildings, and equipment. In fact, the Ordinance appears to contemplate these types of arrangements with regard to equipment and property owned by the individual fire departments. Section 2.20.060 H of the Ordinance states:

To coordinate existing equipment within the county for providing fire-rescue services to obtain maximum use of said equipment for the purpose of mutual aid. The ownership of equipment and property now owned by each district shall remain with that district. Any change of ownership will be approved by the fire control board and the owning fire department board. Any money generated by the sale of such equipment and property will remain with the department and will not be considered as part of the department's annual budget

Mr. Thornton
Page 3
September 19, 2007

This provision not only provides guidance as to the handling of assets formerly held by existing fire departments, it also contemplates the District entering into agreements for the purchase of assets held by fire departments operating at the time the County adopted the Ordinance.

In addition to entering into voluntary agreements with existing fire departments, section 4-9-30(4) of the South Carolina Code (Supp. 2005) gives counties the authority to exercise powers of eminent domain.¹ However, the County cannot acquire property through eminent domain without the payment of just compensation, not to mention the County must comply with the provisions of the Eminent Domain Procedures Act. S.C. Const. art. I, § 13 (1976); S.C. Code Ann. §§ 28-2-10 et seq. (2007).

Conclusion

Despite any provision in the Ordinance, which may lead one to believe that the County has authority to take possession or ownership of buildings, land, or equipment held by private volunteer fire departments, we do not believe the County has statutory authority to take such action. Thus, short of entering into an agreement with the volunteer fire departments for the purchase of such equipment and property or by exercising its power of eminent domain with the payment of just compensation, we do not believe the County may take ownership of property belonging to a private entity.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General

¹Note: In this opinion, we do not opine as to whether a governmental entity may exercise its powers of eminent domain to acquire personal property.