



ALAN WILSON  
ATTORNEY GENERAL

May 18, 2011

Mr. W. Lawrence Brown  
Aiken County Attorney  
828 Richland Avenue West  
Aiken, South Carolina 29801

Dear Mr. Brown:

We received your letter requesting an opinion of this Office concerning county fire service contracts. In short, you asked, "with whom [may Aiken County] contract to provide fire protection service in a certain portion of the county?"

As a way of background you provided that the Aiken County Council established a system of fire protection for Aiken County in 1988. You explained that "[f]ire protection services are provided throughout the county in three ways: by municipal fire/public safety departments, by volunteer fire departments, and by special purpose district. County Council, in cooperation with the various service providers, established a service area map and entered into contracts with the several volunteer fire departments to service their areas. The Belvedere Fire District (BFD) is a special purpose district established by referendum in 1962. It has its own service area within its established boundaries." Residents in the Belvedere-Contract area "received fire protection by private contract with BFD." However, "Council did not enter into any contract with any agency to provide fire protection services within the [Belvedere-Contract] area." BFD requested that billing for BFD fire fees be included on the County tax bills; Council approved the request last year. "A number of residents in the contract area have now petitioned Council stating that they pay for and wish to receive fire protection service from the City of North Augusta instead of BFD. To insure that all properties in the area have fire protection service and to clarify the matter of billing for fire fees, Council is now considering entering into a contract with an appropriate agency to provide service in the contract area. The only agencies with the capability to provide fire protection services to the area are the City of North Augusta and BFD. BFD has expressed a desire to continue to provide fire protection services within the contract area."

The three questions specifically posed in the request letter are as follows:

1. If County Council, acting pursuant to Section 4-9-30 and/or Section 4-21-10, provides that the County shall provide fire protection services, must such services be provided for the entire county with the exception of any municipalities that choose not to participate, or can Council provide for fire protection in some areas of the county and not in others?

2. What if any legal authority exists by which Aiken County could contract with the Belvedere Fire District to provide fire protection services to an area of the county outside the established boundaries of the District?
3. If the county were to contract with Belvedere Fire District to provide fire protection services outside its established boundaries and charge fire fees to the property owners for that protection, would that constitute an illegal expansion of the special purpose district?

### **Law/Analysis**

#### **Question One**

You asked if County Council must provide fire protection services for the entire county with the exception of any municipalities that choose not to participate, or can Council provide for fire protection in some areas of the county and not in others. It is the opinion of this Office that County Council may provide fire protection services to some areas of the county and not in others.

In an opinion of this Office dated February 19, 1986, we addressed County Council's role in fire protection services:

**Several statutes deal with the power of a county council relative to fire protection services:** Sections **4-9-30(5)**, **4-19-10 *et seq.***, and **4-21-10**. The type of fire protection services contemplated by Abbeville County Council would be county-wide, excluding incorporated municipalities. There would be no given area of the county which would receive more or less service than any other area. Council has assessed a small millage with county-wide uniformity for these services for three or four years and also created an advisory board (which has apparently deemed itself the above-discussed Commission) to advise on the best way to spend monies generated by the millage. It appears that a county council is so empowered to provide fire protection services for its citizens and levy a millage, unless another body is authorized by law to levy the millage.

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Generally, **if various portions of a county are to receive a different level of services and thus are to be taxed differently**, Section 4-9-30(5) specifies certain freeholder action to be taken to create the special tax district. As to fire protection specifically, Section 4-19-10 et seq. was reenacted in 1984 following the Supreme Court's holding the predecessor statute unconstitutional in City of Myrtle Beach v. Richardson, 280 S.C. 167, 311 S.E.2d 922 (1984). From the facts of the case, the Court's comparison of the stricken statutes to Section 4-9-30(5) as to freeholder involvement when special tax districts are to be created, and the continual references to service areas in the newly-enacted Section 4-19-10 et seq., it appears that Section 4-19-10 et seq. would become applicable only when uniformity throughout the county is not desired. Thus, it may be concluded that a county

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council has the general power to levy taxes for fire protection under Section 4-9-30(5); Section 4-19-10 *et seq.* would be applicable only when and if service areas are to be established. This is particularly important where, as here, the referendum required before the Commission may levy taxes has not been held.

Op. S.C. Atty. Gen., February 19, 1986 (emphasis added). It is clear that county governments possess the power to tax different areas at different rates based on the nature of the service provided. Therefore, so long as the areas not receiving fire protection services are not being taxed for such service, there is no violation.

Specifically, S.C. Code § 4-9-30 explains that a county council is empowered to make appropriations for functions and operations of the county such as fire protection:

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, **each county government** within the authority granted by the Constitution and subject to the general law of this State **shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof . . .**

(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, **including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, . . . public safety, including police and fire protection . . .** and to provide for the regulation and enforcement of the above. However, prior to the creation of a special tax district for the purposes enumerated in this item, one of the following procedures is required . . .

S.C. Code § 4-9-30(5)(a) (emphasis added).

Also, S.C. Code § 4-21-10, in relevant part, provides that:

**The governing body of any county may by ordinance or resolution provide that the county shall provide fire protection services, ambulance services and medical clinic facilities. Services may be provided by use of county employees and equipment or by contract with municipalities or private agencies. Counties may contract with water and sewer authorities to make provision for fire protection services.** As used in this act “private agencies” shall include but not be limited to nonprofit corporations organized pursuant to Chapter 35 of Title 33 and financed in whole or in part by the Farmers Home Administration.

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**A special tax, fee or service charge may be levied against property or occupants thereof in areas receiving such services. . . .**

S.C. Code § 4-21-10 (emphasis added). This statute explains that the county has the authority to decide whether or not to provide fire protection services. With such power, it is reasonable to conclude that the county may also choose to not provide fire protection services in certain areas so long as the unserved areas are not taxed for fire protection services.

**Question Two**

Consistent with prior opinions, it is the opinion of this Office that Aiken County has legal authority to contract with the Belvedere Fire District to provide fire protection services to an area *of the county* outside the established boundaries of the District. In July 1975 we concluded “that a fire district can provide its services to outside residents only through a contract with the county or with another political subdivision.” Op. S.C. Atty. Gen., July 31, 1975. Even though the area is outside the District, the area is still in Aiken County, providing Aiken County the legal authority to contract with the District.

In a prior opinion of this Office we explained that “Spartanburg County Council has the potential to be involved in some aspects of the special purpose districts' operations. As examples, if bonds are being issued, temporary increases in millage are being sought, or boundaries of special purpose districts are being enlarged or diminished, county council, by statute, has been granted certain authority or responsibility by the General Assembly to help the special purpose districts accomplish these acts. Too, **if a special purpose district has entered into a contract to provide fire services under the county fire protection plan, it is possible that by agreement the county may have some impact on special purpose districts.**” Op. S.C. Atty. Gen., August 26, 1994 (emphasis added).

As mentioned above, this Office has concluded that “that a fire district can provide its services to outside residents only through a contract with the county or with another political subdivision.” Op. S.C. Atty. Gen., July 31, 1975. We explained as follows:

The power of special purpose districts are limited by Section 59–609,<sup>1</sup> which provides that **fire protection may be provided to ‘citizens of such districts.’ The only exception**

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<sup>1</sup> S.C. Code § 6-11-100 has since replaced 59-609. The statute governs the General powers and duties of commissioners in special purpose districts: “The boards of commissioners of such districts shall be bodies politic and shall exercise and enjoy all the rights and privileges of such. They may purchase and build or contract for building such electric light, water supply, fire protection and sewerage systems, may lease, own, hold and acquire all necessary equipment and property for such purpose and operate it and may contract with existing light and water companies and municipalities for light, water and fire protection or contract and connect with existing sewerage systems of municipalities or other districts. They may supply and furnish lights and water and provide for fire protection and sewerage disposal to citizens of such districts and may require an exact payment of such rates, tolls, rentals and charges as they may establish for the use of lights, water, fire protection and the sewerage plant.”



to this rule is found in Section 59-609.1<sup>2</sup> which **provides for services to citizens outside the districts and for the charging of rates.** This section, however, only applies to counties with populations between 41,000 and 43,000 according to the 1950 census; Aiken County is not within this class.<sup>3</sup>

The plain meaning of Sections 59-609 and 59-609.1 **taken together is that special purpose districts may provide their services only to residents of the districts with only exception, which does not apply to Aiken County. There is, however, another means by which the services of a fire district could be offered to outside residents, and that is for the county (Edgefield in this case) to contract with the district.** This procedure has been authorized by the 1973 revision of Article 8 of the Constitution; Article 8, Section 13 provides in part as follows:

‘Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of costs thereof.’

A special purpose district is clearly a political subdivision. Thus, if Edgefield County is willing to enter into a contract with the fire district, that procedure would be proper.

Op. S.C. Atty. Gen., July 31, 1975 (emphasis added). See, Op. S.C. Atty. Gen., October 7, 2009 (“[m]unicipalities generally have the authority pursuant to section 5-7-30 of the South Carolina Code to provide fire protection services within their boundaries.”). Therefore, it would be appropriate for the county in which the desired service area lies, Aiken County, to contract with the special purpose district of Belvedere Fire District.

### **Question Three**

It is the opinion of this Office that charging fire fees to property owners is appropriate and would not constitute an illegal expansion of the special purpose district so long as the property owners being taxed are not already under a contract with another fire protection service provider.

In an opinion of this Office dated October 22, 2007, we addressed whether a county ordinance in Allendale imposing a fire and rescue fee on all real property in the county was appropriate; we concluded as follows:

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<sup>2</sup> S.C. Code § 6-11-110 has since replaced Section 59-609.1. The statute explains that Commissioners in certain counties may furnish services outside district: “In counties having a population between forty-one thousand and forty-three thousand according to the 1950 census, boards of commissioners of such districts may provide water, sewerage and fire protection to citizens outside of such districts in those counties or adjacent counties and charge such rates therefor as they may fix, which may be more but not less than the rates charged citizens of such districts for similar services and facilities.”

<sup>3</sup> This Office is not a fact-finding entity, “investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court.” Ops. S.C. Atty. Gen., September 14, 2006; April 6, 2006.

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[This Office is] unaware of any provision that would prohibit Allendale County from imposing such a fee as outlined above. Generally, pursuant to S.C. Code Ann. § 4-21-10, [t]he governing body of any county may by ordinance or resolution provide that the county shall provide fire protection services, ambulance services and medical clinic facilities. Services may be provided by use of county employees and equipment or by contract with municipalities or private agencies. Counties may contract with water and sewer authorities to make provision for fire protection services . . . A special tax, fee or service charge may be levied against property or occupants thereof in areas receiving such services. Proceeds of such taxes, fees or service charges shall be used to defray the cost of providing the particular service for which they are levied, including the fulfillment of contract obligations with municipalities and private agencies. (emphasis added).

Consistent with the above, in the opinion of this office, Allendale County would be authorized to impose the referenced fee on property in that County.

Op. S.C. Atty. Gen., October 22, 2007. See also, Op. S.C. Atty. Gen., April 4, 2005.

In City of Darlington v. Kilgo, 302 S.C. 40, 393 S.E.2d 376 (1990), our Supreme Court explained:

S.C.Code § 4-19-10(b) protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in the absence of an agreement, newly created county fire districts must exclude areas served by cities under contract.

Kilgo, 302 S.C. 40, 43.

We further explained in the October 7, 2009 opinion of this Office that:

The statutes as interpreted in Kilgo . . . clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in Kilgo, the **legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district.** By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established. The use of some public authorization or ordinance by the appropriate municipal government is critical to put a county on notice, and to insure that there is no inclusion of an area already receiving fire service.”); City of Spartanburg v. County of Spartanburg, 303 S.C. 393, 401 S.E.2d 158 (1991)

Op. S.C. Atty. Gen., October 7, 2009 (emphasis added).

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### Conclusion

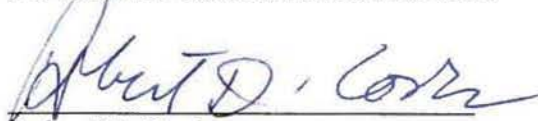
In conclusion, it is the opinion of this Office that 1) County Council may provide fire protection services to some areas of the county and not in others so long as the areas not receiving fire protection services are not taxed for such service. 2) Aiken County has legal authority under S.C. Code § 6-11-100 to contract with the Belvedere Fire District to provide fire protection services to an area of the county outside the established boundaries of the District because even though the area is outside the District, the area is still in Aiken County, providing Aiken County the legal authority to contract with the District. 3) Charging fire fees to property owners is appropriate and would not constitute an illegal expansion of the special purpose district if the property owners being taxed are not already under a contract with another fire protection service provider.

Sincerely,



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REVIEWED AND APPROVED BY:



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