



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

July 31, 2003

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The Honorable Ronald P. Townsend
Member, House of Representatives
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The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
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Re: Donalds-Due West Water Authority

Gentlemen:

The Abbeville County Legislative Delegation [hereinafter the "Delegation"] has asked for an opinion from this Office concerning the Donalds-Due West Water Authority. You indicate that the Water Authority serves customers in Abbeville, Anderson and Greenwood Counties. Specifically, you ask the following questions:

1. What legal authority do the County Legislative Delegations (State Legislature) have in amending or reorganizing a special purpose water district that covers two or more counties?
2. If a reorganization of multi-county special purpose water district can occur, what parameters exist to setting up its board? Under Act #926 of 1974, which was to authorize the governing bodies of all counties wherein exist the Special Purpose District to alter boundaries in unincorporated areas of certain counties.

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3. When these Special Purpose Districts are to be enlarged, diminished, or consolidated, which cover more than one county — which county is authorized under Section 22 (Page 2023) to create a new Special Purpose District Commission (Board) or changes made to the old Commission (Board)? Note: The Special Purpose District initiated in county x with 1620 users and expanded into county y with 425 users and expanded into county z with 25 users.
4. When new members to a Commission (Board) shall be appointed by the Governor, does the Legislative Delegation get involved or should the county governing board (Council) make the recommendation to the Governor?
5. Can elections within the Special Purpose District be held?
6. Can voting districts within the service area be set up to allow residents of a multi-county water service district to vote for board members?
7. Can voting districts within the multi-county service area be set up and come from more than one county or must they be organized to come from within only one county?
8. What governmental agency may extend or grant new territory to a multi-county special purpose water district? County council or councils, legislative delegation or whom?

Each of the Delegations questions will be addressed in turn.

LAW/ANALYSIS

Question 1

First, it is asked what authority a county legislative delegation or the State Legislature may have in the amending or reorganizing of a special purpose water district that covers two or more counties. Generally, the State Legislature has plenary authority to enact legislation. In previous opinions, we have recognized the well-established principle that:

The General Assembly is a creature of the Constitution. Ours is not a grant of authority to the General Assembly; it is a limitation on the General Assembly. The legislature, under its plenary powers, may enact any law not specifically, or by implication prohibited. Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).

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See S.C. Op. Atty. Gen., dated August 18, 1983. Therefore, in this and any other case, the General Assembly has the power to enact any law not prohibited by the Constitution. With reference to the General Assembly's power to enact legislation related to the Donalds-Due West Water Authority, two provisions of our Constitution must be analyzed. Those provisions are found in Article VIII, Section 7 and Article III, Section 34.

Article VIII, Section 7 provides in part that "[t]he 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 provided ... [and] *[n]o laws for a specific county shall be enacted ...* (emphasis added)." Article VIII, Section 7 is not only applicable to special legislation creating a special purpose district, but also to special legislation dealing with special purpose districts created prior to the ratification of Article VIII or the amendment of prior special legislation. Cooper River Park and Playground Commission v. North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979). The Donalds-Due West Water Authority was created by special legislation (Act No. 1675 of 1972) prior to the ratification of Article VIII, Section 7 in 1973. Therefore, if legislative action to amend the Authority is viewed as a law for a *specific county*, then such legislative action may be prohibited by the Constitution.

It has been indicated in the Delegation's request letter that the Authority is a multi-county special purpose district with customers in Abbeville, Anderson and Greenwood Counties. In Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), our Supreme Court addressed the issue of whether a 1975 act of the General Assembly authorizing the issuance of general obligation bonds by the Richland-Lexington Airport District, a special purpose district created in 1962, was constitutional given the prohibitions of Article VIII, Section 7. The Court in Kleckley found the act in question to be constitutional and not related to a specific county because the two-county airport district was a matter of state-wide importance and the subject matter extended beyond purely local concern. 217 S.E.2d at 221, 222. Relying on Kleckley, this Office opined that a 1979 legislative act related to the Western Carolina Regional Sewer Authority, a pre-1973 special purpose district serving Anderson, Greenville and Laurens Counties, was constitutional given the regional nature of that authority. See S.C. Op. Atty. Gen., dated February 5, 1985. Further, while the Court in Kleckley did not appear to base its decision on the mere fact that the special purpose district encompassed more than one county, dicta from the Court in a subsequent holding indicates that the multi-county nature of the district may have been the key factor in their decision. In interpreting the powers of the Fort Hill Natural Gas Authority, created by the legislature in 1952, the Court stated that "[i]f the [Fort Hill] Authority feels that [a portion of their enabling act] is unwise or substantially interferes with its operation of the system, its proper recourse is to seek an amendment from the legislature."

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Fort Hill Natural Gas Authority v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993). The Fort Hill Court, citing Kleckley v. Pulliam, *supra*, further stated "[i]n that regard, we note that any amendment to this statute would not violate Article VIII, Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines of one county." 426 S.E.2d at 789.

Based on the holdings of the Court and our prior opinion referenced in the preceding paragraph, it appears as though the General Assembly may enact laws related to special purpose districts which are of a multi-county nature.¹ It is cautioned, however, that the mere fact that the district exist in or serves customers in more than one county alone may not be sufficient to allow the General Assembly to exercise its powers with regard to the district. In Kleckley, the Court stated that as long as the governmental purpose of the act establishing a special purpose district is "... not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7." 217 S.E.2d at 221. In our February 5, 1985 opinion we stated that a reviewing court "... would most probably examine the powers, duties, functions, and responsibilities of the Authority to determine whether such belong peculiarly to a county."

To determine whether the powers, duties, functions and responsibilities of Donalds-Due West Water Authority are those belonging peculiarly to a specific county, the specific Act creating the Authority must be examined. The Authority was created by the General Assembly by Act No. 1675 of 1972. Among other provisions, Act No. 1675 contains Section 2 which establishes the service area of the Authority. As the name indicates, the service area surrounds the Towns of Donalds and Due West in Abbeville County. According to the area described in Section 2 of the Act, it does not appear that the actual service area of the Authority extends beyond the border of Abbeville County.² The Authority is, however, given the power in Section 12 of Act 1675 to contract with other

¹ This conclusion is not free from doubt. This Office has issued prior opinions expressing differing views. In a May 4, 1983 opinion, we stated that legislation amending a multi-county special purpose district did not violate Article VIII, Section 7. Conversely, in opinions dated June 16, 1983 and January 18, 1984, we opined that legislative action related specifically to multi-county special purpose districts may violate Article VIII, Section 7 and judicial clarification was necessary. These opinions, however, were given prior to the Supreme Courts statements in Fort Hill Natural Gas Authority v. City of Easley, *supra*.

² The enabling legislation for the Donalds-Due West Water Authority was amended by Act No. 776 of 1976, however, this amendment did not relate to the defined service area of the Authority. I have been able to locate no other amendments related to the Authority's enabling legislation.

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“municipalities, public bodies and public agencies operating water district systems in and adjacent to its service area ...” to sell water to those entities.

If the defined service area of the Authority is confined solely to Abbeville County, and the Authority's provision of water to customers in the adjacent Counties of Anderson and Greenwood is the result simply of its power to contract, then the Authority may not actually be considered a multi-county special purpose district. In Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976), the Supreme Court struck down an act of the General Assembly authorizing the issuance of general obligation bonds by the Charleston County Airport District as violative of Article VIII, Section 7. The Charleston County Airport District was created in 1970 and its area was confined solely to Charleston County, unlike the Richland-Lexington Airport District considered in Kleckley v. Pulliam, *supra*. The Court in Torgerson held that, as the District was confined to a single county, the governing body of Charleston County could solve the problems addressed in the General Assembly's act. 230 S.E.2d at 230. The Torgerson Court also stated that

[t]he fact that a Charleston County Airport serves travelers from other counties does not change its local status. It would hardly be argued that a Charleston County Hospital, a Charleston County Library, a Charleston County Museum, or a Charleston County Zoo, is not a local county function merely because it served the needs of citizens from other counties.

230 S.E.2d at 230. Therefore, if the defined service area of the Donalds-Due West Water Authority is located solely within Abbeville County, it is possible that a reviewing court would find legislation related to the Authority to be unconstitutional pursuant to Article VIII, Section 7 despite the fact that the Authority serves some customers in other counties.

The second constitutional provision to consider is found in Article III, Section 34. In particular, subsection (IX) requires that “where a general law can be made applicable, no special law shall be enacted.” As noted by this Office in a prior opinion, “[o]ne key consideration as to whether an act is unconstitutional under Article III, Section 34 is whether there are any peculiar local circumstances which would justify special treatment for the local area in question. Put another way ... could the General Assembly adopt a general law, uniform in operation throughout the state, which would accomplish the same result?” See S.C. Op. Atty. Gen., dated March 23, 1995. A special law is not unconstitutional where there is a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. Medical Soc. of South Carolina v. Medical University of South Carolina, 334 S.C. 270, 513 S.E.2d 352 (1999). “The General Assembly must have a logical basis

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and sound reason for resorting to special legislation ... [and the Supreme Court] will not overrule the legislature's judgment that a special law is necessary unless there has been a clear and palpable abuse of legislative discretion (internal citations omitted)." 513 S.E.2d at 358.

Historically, the Supreme Court has held that legislative acts dealing with special purpose districts, particularly those related to public health issues such as water and sewer services, do not violate Article III, Section 34. See for example Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14 (1957). More recently, the Court in Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority, 326 S.C. 67, 485 S.E.2d 92 (1997) stated that "[f]or decades this Court has recognized the right of the General Assembly to create special purpose districts without regard to the prohibition of S.C. Constitution art. III, § 34(IX)(internal citations omitted)." If the Donalds-Due West Water Authority is a multi-county special purpose district, and no existing general law can be made applicable to the amending or reorganizing of the Authority, then it appears reasonable to conclude that a reviewing court may uphold legislation to accomplish such a reorganization. However, if the defined service area of the Authority is confined solely to Abbeville County, and the Authority's provision of water to customers in the adjacent Counties of Anderson and Greenwood is the result simply of its power to contract, this may not be the case.

S.C. Code Ann. §6-11-420 is a general law which allows the governing body of a county to "... enlarge, diminish or consolidate any existing special purpose districts located within such county..." Also, as referenced in the Delegation's request letter, Section 22 of Act 926 of 1974 (codified in §6-11-610) provides a mechanism for a county governing body to create a new commission or board for purposes of governing an amended special purpose district. These general legislative acts appear to allow the Abbeville County Council to address the situation contemplated by the Delegation if the Donalds-Due West Water Authority is located solely within Abbeville County. I believe this to be the case even if the Authority is providing services outside of Abbeville County pursuant to its power to contract. If, on the other hand, the defined service area of the Authority in fact extends into multiple counties, then, because of the necessary involvement of more than one county governing body, these general laws would not appear to apply to the situation. Further, I have been able to locate no general laws providing for the amending or reorganizing of special purpose districts located in more than one county.

Therefore, in response to the Delegation's first question, it is my opinion that a reviewing court would most likely find an act of the General Assembly amending or reorganizing the Donalds-Due West Water Authority to be constitutional if the Authority's defined service area extends to more than one county. If, however, the Authority's defined service area is confined solely to Abbeville County and it is providing services outside of Abbeville County pursuant to its power to

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contract, then it is my opinion that a reviewing court would most likely find such legislation to be unconstitutional pursuant to both Article VIII, Section 7 and Article III, Section 34. It should be noted that any legislation passed by the General Assembly carries with it the presumption of constitutionality. As this Office previously opined "... in considering the constitutionality of legislation which is enacted by the General Assembly, we must presume that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act of the General Assembly unconstitutional." See S.C. Op. Atty. Gen., dated September 25, 1998 (citations omitted).

Question 2

In the Delegation's second question, it is asked "what parameters exist to setting up [the] board" for a reorganized multi-county special purpose water district. The answer to this question, like the first, in large part depends on the actual make-up of the special purpose district.

If the defined service area of the special purpose district extends to more than one county, then, as mentioned above, the General Assembly may be able to enact laws relative to the district's governing body. If this is the case, then the General Assembly's power to set the "parameters" of the district's governing body is plenary. As stated by the Court in McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947), (overruled on other grounds) "(i)n the absence of restraint in the constitution such power is virtually unlimited." I am aware of no specific provisions in our Constitution related to the establishment of a board of directors for a special purpose district. There are, however, some general provisions which may be applicable to the delegation of powers to the board. For example, in Weaver v. Recreation District, 328 S.C. 83, 492 S.E.2d 79 (1997), our Supreme Court held that Article X, § 5 (prohibiting taxation without representation) is violated when the appointed board of a district is given the power to levy taxes.

If, on the other hand, the defined service area of the special purpose district is solely within the confines of one county, then the General Assembly would most likely be prohibited from enacting any special legislation with regard the district's board of directors. In that case, the governing body of the county would be authorized to act in accordance with existing general law. As the Delegation has noted, Section 22 of Act No. 926 of 1974 (codified as Section 6-11-610) allows a county governing body to make changes to a special purpose district's commission or board when the district has been enlarged, diminished or consolidated pursuant to Section 6-11-420. With reference to the composition of the altered board or commission, Section 6-11-610 provides

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The number of commissioners shall be not less than three nor more than nine. All members of any commission so altered shall hold office for terms to begin upon their appointment and to end two years from the January first following the date of the action of the county board, and the term of all other members of the commission shall extend to and end on such date. All new members to any commission shall be appointed by the Governor upon recommendation of a majority of the legislative delegation of the county, including the resident Senator or Senators, if any. Vacancies in office shall be filled in like manner for the balance of the term of the person whom the appointee is replacing. Following the expiration of the term of office of all members of the commission (whether appointed pursuant to this article or otherwise) successors shall be appointed in the manner provided by this section. All members of any commission shall hold office until their successors shall have been appointed and shall have qualified.

The above cited portion of Section 6-11-610 in essence sets the "parameters" for the board of a reorganized special purpose district. As discussed more fully below, it does not appear that these provisions are applicable to a special purpose district which spans more than one county. Therefore, this option would be available to the Donalds-Due West Water Authority only if its defined service area is located solely within Abbeville County.

There are also other provisions which allow for changes to be made in the board of a special purpose district. These provisions, however, may not be applicable to the Donalds-Due West Water Authority or may not be relevant to the problems sought to be addressed by the Delegation. S.C. Code Ann. §4-9-81 provides that, effective upon a successful referendum, "[t]he governing body of any special purpose or public service district, or water and sewer authority, which is elected may provide by resolution for an increase in the size of its governing body..." As the Donalds-Due West board is appointed, this provision would be unavailable in this case. Further, Sections 6-11-350 through 354 establish a mechanism for holding a referendum on the question of electing the board of a district by popular vote of the qualified electors in the district. These provisions, while allowing for the board to be elected rather than appointed, may not address the concerns raised by the Delegation in this matter.

Question 3

Next the Delegation Members ask which county governing body is authorized to change the board pursuant to Section 6-11-610 (Section 22 of Act No. 926 of 1974) of an enlarged, diminished or consolidated multi-county special purpose district.

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As mentioned above, it is doubtful that the statutory provisions created by Act No. 926 of 1974 which allow for the enlargement, etc. of a special purpose district and the subsequent changing of the district's board apply to a special purpose district which includes a defined service area in more than one county. Act No. 926 of 1974 was eventually codified in the Code of Laws for 1976 in Sections 6-11-410 *et seq.* Section 6-11-420 states that "[t]he county boards (i.e. county council) of the several counties of the State are authorized to enlarge, diminish or consolidate any existing special purpose districts located within such county..." The language of Section 6-11-420 indicating that county councils have the authority to alter the boundaries of "... existing special purpose districts located within such county..." indicate that such authority is limited to a district located solely within a particular county. In fact, this Office has previously opined that, "... the provisions of Sections 6-11-410 *et seq.* ... are most probably not available as a method to provide ..." for the alteration of a special purpose district situated in more than one county. See S.C. Op. Atty. Gen., dated April 19, 1979. As it is the opinion of this Office that a county council has no authority to alter a multi-county special purpose district pursuant to Section 6-11-420, it necessarily follows that neither would a county council have the authority to change the board of a multi-county special purpose district pursuant to Section 6-11-610.

In the April 19, 1979 opinion referenced above, we provided two options for the alteration of a multi-county special purpose district. The first option involves the General Assembly enacting legislation specifically related to the special purpose district as authorized by Kleckley v. Pulliam, supra, (as discussed in response to questions one & two above). The second involves the amendment of Sections 6-11-410 *et seq.* "... to allow county governing bodies to act jointly in altering service areas of special purpose districts which cross county lines." In the April 19, 1979 opinion we also advised that the second "... alternative may be the safest one insofar as the constitutionality of such legislation is concerned since the Supreme Court may very well hold, if and when the issue is presented to it, that the General Assembly cannot continue to legislate with regard to individual special purpose districts but, instead, must devolve that duty upon county governing bodies by general law, at least where multi-county special purpose districts do not perform a regional function like that performed by the Richland-Lexington Airport District in Kleckley."

If the defined service area of a special purpose district is confined to a single county, even if the district is providing services outside of the county by contract, then it is my opinion that Section 6-11-610 would be applicable. Accordingly, to the extent that the defined service area (Section 2 of Act No. 1675 of 1972) of the Donalds-Due West Water Authority is confined to Abbeville County, the County Council of Abbeville would have the power to alter the district and also make necessary changes to the board.

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Question 4

The Delegation's fourth question relates to the appointment process for board members. Specifically, it is asked if the Delegation or the county councils should make the recommendations to the Governor for appointment. It is assumed that this question concerns the appointment process should the district be altered and the board changed.

Again, the answer to this question in large part depends on the current make-up of the Donalds-Due West Water Authority. If the defined service area of the Authority includes multiple counties and the changes are made through legislative action or amendment to the Authority's enabling legislation, then the General Assembly would have plenary power to determine who should make the recommendations for appointment to the Governor. The General Assembly could determine that the relevant legislative delegations, county councils, city/town councils or any combination thereof is/are the appropriate group(s) to make the recommendation. The General Assembly could express this determination through a specific provision in any law passed in this matter.

Conversely, if the defined service area of the Donalds-Due West Water Authority is confined to a single county, then the county council would have the authority to alter the district and make necessary changes to the board pursuant to Sections 6-11-410 *et seq.* Section 6-11-610 provides that, upon a change made to the board, "[a]ll new members to any commission shall be appointed by the Governor upon recommendation of a majority of the legislative delegation of the county, including the resident Senator or Senators, if any." Therefore, if the procedures outlined in Sections 6-11-410 *et seq.* can be used to alter the Donalds-Due West Water Authority, then general law dictates that the Legislative Delegation is responsible for recommending the board members to the Governor for appointment.

Question 5

In its fifth question, the Delegation Members ask if "... elections within the Special Purpose District can be held?" In short, the answer is, yes. The method for accomplishing the task of holding elections for board members of the Donalds-Due West Water Authority depends on the nature of the district.

If the defined service area of the Authority includes multiple counties and the changes are made through legislative action or amendment to the Authority's enabling legislation, then the General Assembly would have plenary power to determine if the board members should be elected

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rather than appointed. If the defined service area of the Donalds-Due West Water Authority is confined to a single county, then existing general law dictates the method for accomplishing a change from appointed to elected members of a special purpose district board. Sections 6-11-350 through 354 establish the procedure for changing a special purpose district's board from one that is appointed to one that is elected. A referendum concerning the question can be triggered either through petition of the qualified electors residing in the district or by resolution of governing body of a special purpose district. See S.C. Code Ann. §§6-11-350(B) & 6-11-351. The provisions of Sections 6-11-350 through 354 do not apply to "(1) any special purpose district, the boundaries of which include areas within more than one county, or (2) any special purpose district which, as of April 1, 1998, pursuant to written contract provided one or more of its authorized services to areas outside the State." See Section 6-11-350(A).

Questions 6 & 7

In its sixth and seventh questions, the Delegation Members request opinions concerning the establishment of voting districts. Specifically, it is asked "[c]an voting districts within the service area be set up to allow residents of a multi-county water service district to vote for board members?" It is also asked if the voting districts can be "... set up and come from more than one county or must they be organized to come from within only one county?"

With reference to the Donalds-Due West Water Authority, if the defined service area is confined to Abbeville County, then existing law referenced above (Sections 6-11-350 - 354) would have to be followed in order to provide for the election of board members. Section 6-11-354(B) provides that, in the event of a successful referendum on the question of election of board members, "... all commissioners must be elected on an at-large basis..." Without a specific statutory definition to the contrary, which I have been unable to locate, the term "at-large" generally means "[c]hosen by the voters of an entire political entity, such as a state, county, or city, rather than from separate districts within the entity." See Black's Law Dictionary (7th ed. 1999). Accordingly, unless the general law is amended, it appears as though voting districts could not be established for the election of board members of a special purpose district pursuant to S.C. Code Ann. §§6-11-350 through 354.

If the defined service area of the Authority includes multiple counties and changes are allowed to be made through legislative action or amendment to the Authority's enabling legislation, then it appears that the General Assembly would have the power, pursuant to its plenary powers, to establish voting districts in the multi-county service area of the Authority. I can find no constitutional or other provision which would prohibit the establishment of voting districts. General constitutional protections, such as one person one vote, should, however, be considered in taking any

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such action. In Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 90 S.Ct. 791, 397 U.S. 50, 25 L.Ed.2d 45 (1970), the United States Supreme Court held that

... whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials...

Therefore, while it appears that voting districts such as those contemplated by the Delegation could be established, equal protection concepts require that the districts be constructed in such a manner that each person, so far as is practicable, has an equal vote. It is also likely that such action on the part of the General Assembly would have to be pre-cleared with the United States Department of Justice.

Concerning the authority to establish voting districts which are "... set up and come from more than one county ...," I can find no limitation on the General Assembly's power in this regard. Therefore, it appears that, subject to the caveats expressed in the paragraph immediately above, the General Assembly could establish such voting districts within a multi-county special purpose district.

Question 8

Finally, the Delegation Members ask "[w]hat governmental agency may extend or grant new territory to a multi-county special purpose water district? County council or councils, legislative delegation or whom?"

The General Assembly has enacted general laws which provide for the alteration of the boundaries of special purpose districts in S.C. Code Ann. §§6-11-410 *et seq.* As is mentioned in response to the Delegation's third question, a county council is authorized to "... enlarge, diminish or consolidate any special purpose districts lying within such county..." A county council may take this action on its own motion and must take this action "... upon the petition of the commissions of the special purpose districts to be affected..." See Section 6-11-430. Therefore, under existing general law, it is within the power of county council to take action to "... extend or grant new territory ..." to a special purpose district located within the county. The General Assembly would most likely be precluded by Article VIII, Section 7 and/or Article III, Section 34 of our Constitution from taking

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such action when it is related to a special purpose district located within a single county.

However, it is the opinion of this Office that a county council has no authority to alter a multi-county special purpose district pursuant to Sections 6-11-410 et seq. See S.C. Op. Atty. Gen., dated April 19, 1979. Therefore, under existing general law, a county council would have no authority to extend the territory of a multi-county special purpose district. There appear to be two options for enlarging the boundaries of a multi-county special purpose district, both of which involve action on the part of the General Assembly. As is suggested in the April 19, 1979 opinion, the General Assembly could enact specific legislation enlarging the territory or amend the general law to "... allow county governing bodies to act jointly in altering service areas of special purpose districts which cross county lines."

CONCLUSION

The answers to the questions of the Delegation depend on the nature of the Donalds-Due West Water Authority. If the defined service area as provided in the Authority's enabling legislation encompasses more than one county it is my opinion that the General Assembly most likely has the power to enact specific legislation related to the Authority. This power, with the caveats expressed above, would extend to establishing the parameters of the Authority's board, altering the boundaries of the Authority, providing for the method of appointment for board members, providing for the popular election of board members and establishing voting districts within the Authority's service area. If, on the other hand, the Authority's defined service area is confined to a single county, then it is my opinion that specific legislative action related to the Authority by the General Assembly would most likely be found by a reviewing court to be unconstitutional pursuant to the prohibitions of Article VIII, Section 7 and/or Article III, Section 34. This is my opinion even if the Authority may be providing services to customers in adjacent counties through its power to contract. If the defined service area of the Authority is confined to a single county then the general law would have to be followed.

Sincerely,



David K. Avant
Assistant Attorney General