



ALAN WILSON
ATTORNEY GENERAL

July 17, 2013

G.P. Callison, Jr., Esquire
McCormick County Attorney
P. O. Box 3208
Greenwood, South Carolina 29648

Dear Mr. Callison:

Attorney General Alan Wilson has referred your letter of March 20, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issues based on that understanding.

Issues: As quoted from your letter:

- 1) *Based on Ordinance 91-21, can Savannah Lakes Village Special Tax District acquire and own real property in the name of Savannah Lakes Village Special Tax District or [the Savannah Lakes Village Tax] Commission or must the property be owned in the name of the County of McCormick? If the [Savannah Lakes Village Special] Tax District can acquire and own real property, should it be in the name of the [Savannah Lakes Village Special Tax] District or the [Savannah Lakes Village Tax] Commission?*
- 2) *Can Savannah Lakes Village Special Tax District acquire and own personal property, such as fire trucks, ambulances and/or equipment in its own name and not in the name of the County of McCormick? If the [Savannah Lakes Village Special] Tax District can acquire and own personal property, should it be in the name of the [Savannah Lakes Village Special Tax] District or the [Savannah Lakes Village Tax] Commission?*
- 3) *Can the Savannah Lakes Village Special Tax District acquire a separate tax identification number in the use and the acquisition and ownership of property and other matter or must it use the tax identification number of the County of McCormick? If so, should the TIN be acquired in the name of the [Savannah Lakes Village Special Tax] District or the [Savannah Lakes Village Tax] Commission?*
- 4) *Having provided in Ordinance 91-21 that the Savannah Lakes Village Special Tax District will be governed by a Tax Commission appointed by County Council; does the Special Tax District remain a division of McCormick County, subject to the County's control concerning the acquisition and ownership of property and entering into contracts therefore?*

Law/Analysis:

By way of background, the law concerning Special Purpose Districts is found in Title 6 (titled “Local Government—Provisions Applicable Special Purpose Districts and Other Political Subdivisions”) in Chapter 11 (titled “Special Purpose or Public Service Districts Generally”). Special purpose districts include ones created by referendum pursuant to general or special legislation except for those established in Title 4, Chapter 9. S.C. Code § 6-11-100 (1976 Code, as amended). That statute says:

The boards of commissioners of these districts must be bodies politic and shall exercise and enjoy all the rights and privileges of such. They may purchase and build or contract for building electric light, water supply, fire protection, and sewerage systems, and may lease, own, hold, and acquire all necessary equipment and property for that purpose. ... Property purchased by the boards of commissioners may be held in either the name of the commission or the name of the district.

S.C. Code § 6-11-100. However, Savannah Lakes Village Special Tax District was created pursuant to Section 4-9-30 (5)(a) of the South Carolina Code of Laws, as outlined in McCormick County Council Ordinance 91-21. The code outlines:

In the ordinance establishing the special tax district, county council shall provide for the operation of the special tax district. The special tax district may be operated as an administrative division of the county, or county council may appoint a commission consisting of three to five members and provide for their terms of office.

S.C. Code § 4-9-30 (5)(b). Based on the language in the ordinance, a commission of five members appointed by McCormick County Council was established and is called the Savannah Lakes Village Tax Commission. McCormick Co., S.C., Ordin. 91-21, Section V (a) (Nov. 26, 1991). Based on information¹ provided by your office, it is this Office’s understanding the Savannah Lakes Village Special Tax District is not operating as an administrative division of the county but instead is operating under a separate commission called the Savannah Lakes Village Tax Commission pursuant to S.C. Code § 4-9-30 (5)(b).

The language in the ordinance concerning the Savannah Lakes Tax Commission further states:

The Commission shall have the powers to negotiate all lawful contracts concerning the providing of fire protection, police protection, and emergency medical services for the district and shall generally look after the business affairs of the district relating to such services.

McCormick Co., S.C., Ordin. 91-21, Section V (c) (Nov. 26, 1991). This Office issued an opinion in 1995 based on this ordinance that said that the position of a commissioner on the Savannah Lakes Village Commission would be an office because of the commissioner’s powers. That opinion concluded those powers of negotiating contracts for services and handling the business of the tax district involved the

¹ As your letter states, “[a]lthough the composition of the members of the [Savannah Lakes Village] Tax Commission has been changed by subsequent ordinances, the gist of Ordinance 91-21 remains the same – excluding police protection.” This Office has not reviewed any other ordinances or information other than Ordinance 91-21 and is relying on the information provided by your letter for this Opinion.

Sovereign power of the State. Op. S.C. Atty. Gen., 1995 WL 810376 (December 13, 1995). Thus, we presume that since the Tax Commission has been given full powers to negotiate all lawful contracts for the providing of fire and other emergency services, the ordinance would likely imply authorization for a contract for the purchase of assets. Id. Otherwise, it could be considered unreasonable for a fire station to run without purchases such as a hose and a fire truck if those services were not contracted out.

However, the real issue remains as to in whose name those assets (whether real or personal property) should be held: the county's name, the special tax district's name or the tax commission's name. One prior opinion by this Office dealt with a similar such situation but in that case the special tax district was an administrative division of the county not under a separate commission as in this case. In that opinion, this Office opined that the administrative body was limited to the powers given to it by ordinance, and that purchasing real property would be most prudently done in conjunction with the county. Op. S.C. Atty. Gen., 2011 WL 6120338 (November 17, 2011).

Additionally, this Office stated in a 1998 opinion concerning a State agency:

And in another Opinion of June 16, 1974, we addressed the question of whether the South Carolina Commission for the Blind "is authorized to purchase real property...[.]" In response, we concluded: "The Commission [for the Blind] lacks the statutory authority, both in its own act (Act No. 958 of 1966) and in the statutes relating to State agencies in general, to purchase real property in its own name. This lack of legal capacity would extend to an option to purchase so as to bind neither party. Few state agencies do have this power as it is vested in specific statutory language, or in a general grant of power to act as a corporate body." Therefore, any property that would be purchased for the Commission [for the Blind] would be in the name of the State, and this must be accomplished through the Budget and Control Board of the Division of General Services. Thus, it appears there may be a legal distinction between the authority of the Budget and Control Board in this regard, where an agency possesses no power to hold title to real property in its own name, and where the agency's enabling authority specifies that it may hold title in that agency's name. A court could well delineate between the Budget and Control Board's authority to override specific agency enabling statutes and the power of the Board, pursuant to its general authority in the area of real property to step in where an agency does not possess such express power. The General Assembly certainly has not indicated an overriding State policy in this area, and appears to have simply dealt with the issue on a case-by-case basis. There is, in other words, no specific statute which would enable the Board to direct each and every agency of State government to take title of real property in the name of the State. It is well recognized that "[t]he power of the State with respect to its property rights is vested in the legislature and the legislature alone can exercise the power necessary to the enjoyment and protection of those rights, by the enactment of statutes for that purpose. Thus, any acquisition of property must be of a manner and kind permitted by the authorizing statutes, and, where the State has not given its consent to the acquisition of property in a particular way, it is not entitled thus to acquire it." 81A C.J.S. States, § 145, pp.590-5[9]1.

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Accordingly, in order to accomplish this with certainty, legislative clarification would be necessary.

Op. S.C. Atty. Gen., 1998 WL 747049 (September 25, 1998) (citing Op. S.C. Atty. Gen., 1974 WL 27177 (June 16, 1974)). This Office has also previously stated "the powers of a public service district are construed strictly. Public service districts have only such powers as are specifically granted by statute or which may be reasonably implied therefrom." Op. S.C. Atty. Gen., 2003 WL 21212006 (May 19, 2003) (citing Op. S.C. Atty. Gen., 2002 WL 1925742 (June 27, 2002)). Even though a special tax district may not necessarily be a special purpose district, special tax districts would likely have the same such restrictions to powers specifically granted by statute or those reasonably implied. Ops. S.C. Atty. Gen., 2003 WL 21212006 (May 19, 2003); 1984 WL 159938 (November 14, 1984).

In regards to all four of your questions, based on the language in the ordinance, the only powers specifically given to the Savannah Lakes Village Tax Commission are the powers to negotiate all contracts and the power to handle the business affairs for the Savannah Lakes Village Special Tax District. McCormick Co., S.C., Ordin. 91-21 (Nov. 26, 1991). In all instances the district must remain within the parameters for which it was created. Op. S.C. Atty. Gen., 2003 WL 21212006 (May 19, 2003). While your other questions remain, this Office would urge further analysis before placing property in the name of the special tax district or the tax commission. This Office suggests, where possible, clarification with the county by ordinance or other appropriate means.

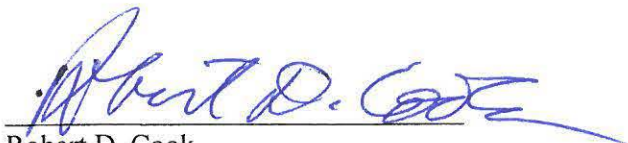
Conclusion: Based on the information given, this Office believes a court would likely deduce the tax commission has authorization to purchase the assets necessary for the function of the special tax district, but we would suggest further inquiry into whether the special tax district, the tax commission or the county should hold the title for property purchased. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General