



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 31, 2001

The Honorable David J. Owens, II
Member, House of Representatives
103 W. Murray Street
St. George, South Carolina 29477

RE: Informal Opinion

Dear Representative Owens:

By your letter of July 17, 2001, you have requested an opinion of this Office concerning fire protection in Colleton County. You write:

In the past, Colleton County had fourteen separate fire districts. Each district received its own funding from the county based upon a formula that assessed each property owner one dollar for every thousand dollars for fire protection. The one-dollar assessments went to the fire districts. The money collected in each fire district went to the fire department in that district and covered things such as personnel and equipment.

In recent years Colleton County revised this system and instituted a different funding formula for its fire districts. Under this current funding formula, each property owner is assessed a certain number of mills for fire protection. The money collected from the fire protection assessment then goes into the County's general fund for distribution by a five-person fire commission. County Council requires each fire district to submit its proposed budget and budget requests to the five-person fire commission. These requests cover personnel and equipment. My understanding is that the five-person fire commission makes the determination of the amount of funding each of the fourteen fire districts receives from the county.

You now ask two specific questions: 1) Is it legal for everyone in the county to pay the same millage for fire protection yet not receive the same level of funding for its fire district? 2) Is it legal for County Council to delegate its budget authority to the five-person fire commission?

Respectfully

I will address your second question first, which may be resolved by a clarification of the facts. I have talked to the county attorney, as well as officials in the county administrator's office, and they have provided more detail concerning the fire commission's involvement in the budget process. As you have noted, the fire commission does formulate a budget for the various fire districts based upon the information submitted by the districts for consideration. However, the fire commission then submits the proposed budget to the County Council for their review. The County Council reviews the budget and then approves, disapproves, or modifies the budget as it deems necessary. In this respect, the fire commission serves in an advisory capacity to the County Council because the Council is not obligated to accept the commission's proposals. See OP. ATTY. GEN. Feb. 19, 1986. Thus, the Council has not delegated its budget authority to the commission.

Your first question concerns the imposition of the same millage rate throughout the county and the level of funding received by the various fire districts. Your letter states that "some residents feel they are receiving lower levels of fire protection while paying the same amount as those receiving higher levels. One fire district may have a full-time employee, while others have only part-time employees or no employees."

Section 4-9-30 of the South Carolina Code of Laws authorizes a county 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, ..." The statute permits the county to tax different areas at different rates depending on the level of service, but it is highly speculative to conclude that the differences between full-time and part-time staffing in the various districts necessarily entails an inequitable variance in service levels. For example, it may require forty full-time hours in one district to attain the level of services achieved in another district with only nine full-time hours. This is a question of fact which is beyond the scope of an opinion of this Office to resolve. Furthermore, with regard to the disparate provision of services in areas of the county, the Supreme Court of South Carolina has said the following:

Although some services are not rendered in the incorporated areas, these services are still provided for the maintenance of county government and, therefore, benefit all the residents of the county. The equal protection clause does not require that mathematical symmetry be attained between benefits received and payment for those benefits. *Cf. Decatur Tax Payers League, Inc. v. Adams*, 226 S.E.2d 69 (1976) (Federal and State constitutions do not require persons paying taxes to receive equal benefits from the facilities for which the taxes are used).

Davis v. County of Greenville, 313 S.C. 459, 465, 443 S.E.2d 383, 386(1994). Thus, the law gives some deference to the county's discretion in the exercise of its taxing authority. It seems unlikely that a court would strike down as illegal Colleton County Council's distribution of varying amounts of funding among the different fire districts.

Representative Owens
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This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Susannah R. Cole".

Susannah Cole
Assistant Attorney General