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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 5, 2001

The Honorable Dozier M. Munn
Mayor, Town of Pamplico
P.O. Box 296
Pamplico, South Carolina 29583

RE: Informal Opinion

Dear Mayor Munn,

By your letter of June 18, 2001, you have requested an opinion of this Office concerning the legality of a county council's proposal to change the boundaries of a fire district. By way of background, you inform me that the Florence County Council has already given first reading to an ordinance that would expand the service area of the Hannah-Salem-Friendfield Fire District. The Hannah-Salem-Friendfield Fire District now borders an area outside the municipal limits of Pamplico, but served by the Pamplico Fire District for approximately thirty years. Although the Pamplico Fire District voluntarily provides fire protection to this unincorporated area, no formal contract exists between the District and the landowners for the provision of the service. Florence County Council now intends to designate a portion of this unincorporated area traditionally served by the Pamplico Fire District as part of the Hannah-Salem-Friendship Fire District and levy a tax for the provision of the service. You ask if the County Council may proceed without having a referendum.

South Carolina Code of Laws Section 4-19-10 grants the governing bodies of counties broad powers for the provision of fire protection services. Section 4-19-10 states in relevant part:

The governing body of each county has the following powers:

- (a) To establish, operate, and maintain a system of fire protection.
- (b) *To designate, subject to the provisions of § 4-19-20, the areas of the county where fire protection service may be furnished by the county under the provisions of this chapter (referred to in this chapter as service areas); provided, however, that these service areas shall exclude those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection*

*Respectfully,
Charlie Condon*

powers within the service area of such political subdivision and the sharing of the costs thereof.

(l) To effect the levy and collection of ad valorem taxes without limit as to rate or amount upon all taxable property in each service area where fire protection services are furnished to effect the payment of principal and interest of all bonds issued pursuant to this chapter or required for the maintenance and operation of the fire protection system.

(m) To exercise any and all other powers necessary to operating and maintaining a system of fire protection.

(Emphasis added).

Furthermore, Section 4-19-20 provides for the procedural requirements that must be followed prior to the imposition of a tax upon the area. Section 4-19-20 states in part:

Before the establishment of a fire protection district pursuant to this chapter, the governing body must comply with the following requirements:

(1) The governing body shall, by resolution, order a public hearing to be held on the question of the establishment of the district.

(2) Notice of the hearing must be published once a week for three successive weeks in a newspaper of general circulation in the county and the notice must state:

(a) the time and place of the public hearing, provided that the date of the public hearing must not be less than sixteen days following the first publication of the notice;

(b) a description of the area to be included within the proposed fire protection district;

(c) whether there must be levied within the proposed fire protection district ad valorem taxes for the operation and maintenance of it;

(d) whether there must be imposed rates and charges within the proposed fire protection district for the operation and maintenance of it; and

(e) whether the governing body is empowered to issue general obligation bonds of the county, payable from an ad valorem tax levied within the district, for the purpose of providing fire protection service in it.

(3) The hearing must be conducted publicly and both proponents and opponents of the proposed action must be given full opportunity to be heard.

(4) Following the hearing, the governing body, by ordinance, may establish the fire protection district and, in order to provide for the operation and maintenance of it, authorize the levy of an annual ad valorem tax on all taxable property within the fire protection district or the imposition of rates and charges for fire protection services within the fire protection district, or both. The governing body shall specifically

find by ordinance that the establishment of the fire protection district satisfies the requirements and conditions set forth in Section 4-19-10 and in this section. The governing body also shall provide for the administration of the fire protection district. The fire protection district may be operated as an administrative division of the county, or the governing body may appoint a commission consisting of three to seven members and provide for their duties and terms of office. . . .

(Emphasis added).

As the emphasized language above illustrates, the county council has the authority to designate areas within the county for fire protection services and levy the appropriate tax on the areas served. Nothing in these statutes requires the county to conduct a referendum before enacting the ordinance for the creation and taxation of the serviced area. The county is limited, of course, by the procedural requirements of the statute. Although not quoted above, Section 4-19-20 (6) provides that a person must challenge the actions of the governing body in a court of common pleas within twenty days of the last published notice of the county's final action.

Another limitation on the establishment of the new fire district, or the extension of fire protection to other areas in the county, is the provision in Section 4-19-10 (b), which states that the new service area designated by the county "shall exclude those areas where fire protection is then being furnished by some other political subdivision." This provision was the basis for a challenge by a city against a county administrator and county council after the county attempted to include unincorporated areas of the county in the creation of a new fire district. See City of Darlington v. Kilgo, 302 S.C. 40, 393 S.E.2d 376 (1990). The South Carolina Supreme Court found that the General Assembly intended to allow municipalities to continue to provide the fire protection services in areas previously served under contract, stating: "It is our view that 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." Id. at 43, 393 S.E.2d at 378.

The Court later clarified the significance of the pre-existing agreement in Carolina Power & Light Co. v. Darlington County, 315 S.C. 5, 431 S.E.2d 580 (1993). The Court examined the issue of the existence of a contract between a city and a utility located outside the city's corporate boundaries, stating:

The statutes as interpreted in Kilgo, supra, 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

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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.

Id. at 582. Thus, the court requires some formal action by the municipality either entering into the contract or recognizing the existence of the contract for the exclusion in Section 4-19-10 (b) to apply.

You have informed me that the Town of Pamplico has no formal contract with the landowners who reside outside the corporate limits of the town but in the area to be included in the new service area. Although the existence of a contract is a factual question that only a court could ultimately resolve, case law suggests that something more than a simple understanding between the outlying landowners and the Pamplico Fire District would be required to prevent the county from taking action pursuant to Section 4-19-10 *et seq.*

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,



Susannah Cole
Assistant Attorney General