

The State of South Carolina



Office of the Attorney General

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October 28, 1994

The Honorable Harry R. Askins
Member, House of Representatives
212 Lockwood Drive
Lake City, South Carolina 29560

Dear Representative Askins:

On behalf of a constituent, you had inquired as to the constitutionality of section 5 of Act No. 1817, of 1972, which created the Florence County Fire District. The particular concern was as to the "unequitable allocation of the funds collected by this tax district as outlined in Section 5 of the Act."

We sought input from the Florence County Attorney's office several times, pursuant to your permission to do so, but have not received any input. There may well be matters of a local nature which would affect this opinion request, matters of which this Office would have no knowledge. Thus, the following opinion will be guided by rules of statutory construction and consideration of constitutional issues which may appear from the face of the Act. We must caution that local circumstances of which we are not aware could cause the conclusions reached herein to change.

In considering the constitutionality of an act of the General Assembly, it is presumed 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. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. 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 unconstitutional.

As observed, Act No. 1817 of 1972 established the Florence County Fire District. There were established six subdistricts with boundaries outlined in the act. The areas of the cities of Florence and Lake City and the area of any other municipality in Florence County providing itself with full-time fire service on the effective date of the act were specifically excluded from the terms of the act. As to a tax levy, section 5 of the act provided:

The auditor and treasurer of Florence County are hereby authorized to levy and collect a tax of not more than five mills, to be determined by the Board of Fire Control, upon all the taxable property within each subdistrict for the purpose of defraying the expenses incurred by the board. All monies collected from this levy shall be limited to each subdistrict in which the levy is laid and the monies collected shall be credited and expended within the subdistrict from which the same is collected; provided, however, that the tax levy authorized in this section shall not be levied in any subdistrict until a referendum is held within the subdistrict and a majority of the electors voting in such referendum vote in favor of such levy.

By Act No. 658 of 1973, the 1972 act was amended in several respects.¹ The Florence County Fire District was subdivided into three subdistricts of the boundaries described in that act. Section 5 as to the tax levy was amended by adding the following proviso at the end of the section:

Provided, further, that the tax levy in each subdistrict shall be uniform and in the event a particular subdistrict rejects an increase in the tax levy while other subdistricts approve such increase, the subdistrict rejecting the increase shall cease to be a part of the district.

In addition, section 4 of the 1973 act provided:

The results of the referendum pertaining to the authorization of a tax levy for each of the subdistricts that was conducted pursuant to the provisions of Section 5 of Act 1817

¹ The 1972 act was also amended by Act No. 593 of 1984, but that act is not pertinent to this discussion.

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of 1972 are hereby expressly affirmed and validated by the General Assembly as a declaration of the wishes of the qualified electors of the respective subdistricts as to the subdistricts participation in the Florence County Fire District and the General Assembly hereby declares that the district shall be constituted as provided for by the provisions of this act.

Construing all of these provisions together, the following conclusions may be reached:

1. Taxes of not more than five mills, to be determined by the Board of Fire Control, are authorized to be levied and collected on all taxable property within each subdistrict for the purpose of defraying expenses incurred by the board (presumably in doing the things necessary to provide fire services in the subdistricts).
2. All monies collected from the levy shall be limited to each subdistrict in which the levy is laid.
3. The monies collected are to be credited and expended within the subdistrict form which the taxes are collected.
4. No taxes may be levied in a given subdistrict unless approved by referendum.
5. The tax levy in each subdistrict shall be uniform.
6. If a particular subdistrict rejects an increase in the tax levy while other subdistricts approve the increase, the subdistrict rejecting the increase shall cease to be part of the district.

It is axiomatic that the General Assembly may provide for ad valorem taxation by the State and any of its political subdivisions, which would include a district such as the fire district in question. Art. X, § 1 of the state Constitution. Article X, § 6 requires that "[p]roperty tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes;" It is observed that the acts referred to above require that the tax levy in each subdistrict be uniform.

A recent decision of our Supreme Court, Davis v. County of Greenville, _____ S.C. _____, 443 S.E.2d 383 (1994), reiterates this principle. In that case, taxpayers of Greenville County brought a lawsuit challenging the county's practice of taxing all

residents at a uniform rate while providing certain services only in the unincorporated areas of the county. The practice was upheld against a variety of constitutional challenges. The court stated:

The plain language of Article X, § 6 does not impose uniformity on the distribution of taxes. Under Article X, § 6, uniformity is obtained when property taxes are levied equally within the county. [Cite omitted.] Because the property taxes levied throughout Greenville county are uniform, the trial judge was correct in holding that the County plan does not violate the article X, § 6 of the Constitution.

Davis, _____ S.C. at _____, 443 S.E.2d at 386.

A well-settled rule of taxation is expressed in 85 C.J.S. Taxation § 1057, at page 647:

... the benefits of taxation should be directly received by those directly concerned in bearing the burdens of taxation, so that a legislature cannot divert taxes raised by one taxing district to the sole use and benefit of another district; and, in general, state, county, and district tax moneys must be expended respectively for the state, county, and district purpose, except in so far as the constitution may provide for an exception to that rule.

While our state's Constitution authorizes joint ventures among or between the State and/or the various political subdivisions, see Art. VIII, § 13, a political subdivision's levying of taxes merely for the use and benefit of another political subdivision would not be acceptable. See Art. X, § 5 (as to taxation without representation) and Art. X, § 7 (as to a political subdivision levying taxes to meet its estimated expenses). The acts cited above seem to indicate that monies collected from the authorized tax levy are to be limited to each subdistrict in which the levy is laid.

As a practical matter, the assessed value of the taxable property within each subdistrict should be considered. The tax levy is apparently supposed to be uniform, but the amount of money generated by a levy will necessarily depend on the assessed value of the taxable property. If one district contains property totaling an assessed value greater than other subdistricts, the first subdistrict will necessarily generate greater tax revenues. Hence that subdistrict will have greater revenues to spend on providing fire protection services. We do not discern a constitutional problem in this regard.

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As mentioned earlier, there may be matters of a local nature of which this Office is unaware, which could affect the foregoing. With that caveat, this Office concludes, on the basis of the foregoing that the acts in question are not constitutionally infirm.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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