



Office of the Attorney General

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June 8, 1990

Cameron A. Glenn, Esquire
Bethea, Jordan & Griffin, P.A.
Post Office Box 1454
Columbia, South Carolina 29202

Dear Ms. Glenn:

By your letter of May 8, 1990, on behalf of the governing body of the Broad Creek Public Service District of Hilton Head Island, you have asked for the opinion of this Office on the following questions:

1. Whether an opinion dated June 17, 1976 which concluded that the Broad Creek Public Service District Commission was not authorized to compensate its members, remains the opinion of this Office; or

2. Alternatively, whether or not the provisions of Section 6-11-91 of the South Carolina Code of Laws (1989 Cum. Supp.) would apply to a public service district created by act of the General Assembly.

Standard of Review

A previous opinion rendered by this Office remains the opinion of this Office unless, upon review, the opinion is found to be clearly erroneous. In such event, the earlier opinion will be superseded. Factors which often cause opinions to be superseded include the subsequent adoption of legislation affecting the issue or a pertinent judicial decision which, upon review, mandates that a different conclusion be reached.

Broad Creek Public Service District

By Act No. 1739, 1972 Acts and Joint Resolutions, the General Assembly created the Palmetto Dunes Public Service District in

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Beaufort County to provide water services in the designated area. The name of the district was subsequently changed to Broad Creek Public Service District. The enabling legislation sets forth the powers and duties of the District's governing body, but nowhere is compensation for commission members specified. The District is a public service or special purpose district. See Op. Atty. Gen. No. 84-132 for criteria in making that determination.

Prior Opinion

In an opinion of this Office dated June 17, 1976, then-Assistant Attorney General Karen Henderson reviewed the above-cited enabling legislation, particularly Section 4(14) of Act No. 1739 which enables the governing body to establish compensation for its officers, agents, employees, and servants. Concluding that the commission members themselves were not officers, agents, employees, or servants, and in reliance on principles of general law about fixing compensation, the opinion concluded that the commission members had not been authorized to set compensation for their services.

Section 6-11-91

Subsequent to the opinion of June 17, 1976, Sections 6-11-91, 6-11-92, and 6-11-93 were added to the Code of Laws by Act No. 515 of 1980. While Section 6-11-92 would permit a special purpose or public service district's governing body to continue in effect the compensation or benefit plan in existence on the effective date of the act (June 16, 1980), Section 6-11-91 provided the following option:

Notwithstanding any other provision of law the governing body of any public service district or special purpose district may by resolution or ordinance fix or change the compensation or other benefits including insurance benefits for the members of the district governing body. Compensation shall not exceed the amounts authorized for mileage for members of state boards, committees and commissions, insurance benefits shall not exceed those provided for state employees and per diem shall not exceed thirty-five dollars a day.

In previous opinions of this Office, this statute has been construed as applicable to special purpose or public service districts created by act of the General Assembly. See Ops. Atty. Gen. dated October 28, 1987 (Charleston County Aviation Authority) and January 23, 1985 (Western Carolina Regional Sewer Authority), as representative opinions.

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Section 8-15-10

Also to be considered is Section 8-15-10 of the Code, which provides that

[e]xcept as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of this State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

No provision of the Constitution would appear to prohibit or otherwise provide for the compensation contemplated for the District's governing body.

Discussion

Section 8-15-10 permits a political subdivision (i.e., public service or special purpose district) to set the compensation of its officers and employees except when such would be prohibited by the State Constitution or as otherwise provided. No constitutional prohibition has been identified in this instance. The lack of authorization to set compensation in the enabling legislation would appear to have been superseded by the language of Section 6-11-91 which states that "[n]otwithstanding any other provision of law" the governing body of such a district is authorized to set or change its members' compensation or other benefits. This Office has previously advised that Section 6-11-91 would be applicable to special purpose or public service districts created by the General Assembly, notwithstanding the fact that it is codified with several statutes relative to special purpose districts created by other means.

Based on the foregoing and in response to your inquiries, we advise as follows:

1. The opinion of June 17, 1976, would be superseded by the subsequent adoption of Section 6-11-91 of the Code, which statute would permit the governing body of a special purpose or public service district to fix or change its compensation or benefits.

2. As stated in previous opinions, we have concluded that Section 6-11-91 would apply to special purpose or public service districts created by the General Assembly. Thus, the provisions of this section may be utilized by the Broad Creek Public Service District. In so concluding, this Office advises that it offers no comment on or endorsement of any particular plan of compensation.

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We trust that the foregoing has adequately responded to your inquiry. Please advise if we may provide clarification or additional assistance.

With kindest regards, I am

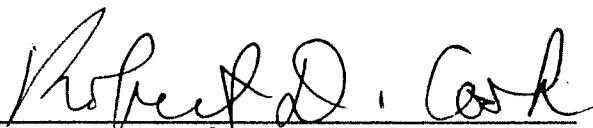
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
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