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September 16, 1988

H. F. Bell, Esquire
Chesterfield County Attorney
Post Office Box 189
Chesterfield, South Carolina 29709

Dear Mr. Bell:

You have advised that Chesterfield County Council proposes to provide fire protection services to those areas of Chesterfield County not already being served by a fire district created pursuant to Chapter 19 of Title 4 of the Code of Laws of South Carolina (1976, as revised) or by municipalities within the county.

Chesterfield County Council proposes to divide the remainder of the county into separate fire districts or service areas and then contract with either a municipality or a volunteer fire department (i.e., a private corporation) to provide the fire protection service. To finance the cost of equipment and provide the service, a service charge would be assessed against each parcel of real estate in the service area which has one or more buildings located thereon. While uniform from parcel to parcel in an area, the charge would vary from area to area of the county. No taxes are anticipated to be levied at this time. You have asked whether this means of providing fire protection service and the financing thereof would be legal.

Section 4-21-10 et seq. of the Code authorizes a county to provide fire protection services by means of a contract with municipalities or private agencies (i.e., a private corporation or volunteer fire department), or by using county employees and equipment. The statute provides in relevant part:

> A special tax, fee, or service charge may be levied against property or occupants thereof in areas receiving such services. Proceeds of such taxes, fees or service charges shall be

> used to defray the cost of providing the particular service for which they are levied, including the fulfillment of contract obligations with municipalities and private agencies.

As noted above, a fee or service charge is anticipated to be charged; no taxes are to be levied under this plan.

If taxes were to be levied, it is clear, in the wake of City of Myrtle Beach v. Richardson, 280 S.C. 167, 311 S.E.2d 922 (1984), that the statutory scheme specified in either Section 4-9-30(5) or Section 4-19-10 et seq. must be followed. As noted in Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984),

> To be an assessment [i.e., a surcharge or fee], there must be a benefit and, if none, it is a tax. Taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefitted by the proposed improvements.

Id., 282 S.C. at 389. It is the understanding of this Office that property for which the fee is not paid would not benefit from the fire protection service. Thus, a fee rather than a tax is being imposed, and so it is not necessary to utilize the procedures of Sections 4-9-30(5) or 4-19-10 et seq. It would therefore be appropriate in this instance to proceed according to Section 4-21-10 et seq., as Chesterfield County Council contemplates.

A review of a proposed ordinance concerning the High Point-Eastside service area of Chesterfield County raises two questions of concern. First, the ordinance would authorize Chesterfield County Council to levy, assess, and collect from the owner of each separate parcel of real estate with one or more buildings situate thereon an annual charge of Twenty and No/100 ($20.00) Dollars to compensate the appropriate volunteer fire department. The same fee would be charged whether the parcel was a quarter acre in size with one building or many acres in size with numerous buildings as might be found on a farm. Too, no provision is made for levying a fee on a parcel containing no buildings but which parcel could easily require fire protection services (i.e., a field, pasture, tract of timber-land). The fee to be levied may in many aspects not be commensurate with the level of services which could be anticipated to be provided, given the nature of a particular parcel of real estate. Service charges are generally supposed to be "reasonably proportional to the value of the product or service received, ..."; otherwise, the charge might amount to a tax which would then necessitate following

the constitutional provisions for levying taxes. Supervisors of Manheim Tp., Lancaster County v. Workman, 350 Pa. 768, 38 A.2d 273, 276 (1944). The net result would be that some property owners (those with no buildings, who pay no service charge, who may need fire protection) will receive services at the expense of other property owners (whose properties contain buildings, who do pay a service charge), Cf., City of Roanoke v. Fisher, 193 Va. 651, 70 S.E.2d 274 (1952), a practice which is discouraged.

A second concern is that the charge to be imposed upon the particular property will be a lien on the property and will be collected along with ad valorem taxes from the property owner in the same manner as ad valorem taxes, including delinquent taxes, are collected. A more preferable method of collecting the charge would be by judicial action. See letter of Chief Deputy Attorney General Joe L. Allen to Kenneth Williams dated November 5, 1985, with enclosure.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if anything further is needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions