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The State of South Carolina

Office of the Attorney General

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April 3, 1985

The Honorable William W. Doar, Jr.
Member, Senate of South Carolina
Suite 404, Gressette Office Building
Columbia, South Carolina 29202

Dear Senator Doar:

By your letter of March 19, 1985, you have asked whether the General Assembly might amend Act No. 876, 1966 Acts and Joint Resolutions, to provide for either the imposition of additional millage or an impact fee. Act No. 876 created the Murrells Inlet - Garden City Fire District in Georgetown and Horry Counties. For the reasons following, this Office advises that such an amendment by the General Assembly would most probably be constitutionally permissible. 1/

In our telephone conversation on March 28, you indicated that your major concern was whether such an amendatory act by the General Assembly would be viewed as local or special legislation and thus prohibited by the State Constitution. Article VIII, Section 7 provides in part that "[n]o laws for a specific county shall be enacted." As noted above, the fire district in question is comprised of portions of two counties.

In considering the constitutionality of an act of the General Assembly, the act is presumed to be constitutional in all respects. An act will not be considered void unless its constitutionality is clear beyond any reasonable

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1/This Office has examined no proposed legislation and merely comments herein on the concept of such legislation as suggested by your letter.

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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. Moreover, while this Office may comment upon constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

The South Carolina Supreme Court in Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), addressed the constitutionality of an act of the General Assembly permitting a special purpose district located in two counties to issue general obligation bonds. In finding that the act did not violate Article VIII, Section 7 of the State Constitution, the Court stated that

> the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government are set aside for counties. ...
>
> The record here clearly establishes that the function of this airport is not peculiar to a single county or counties. ... It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7. ...
>
> The important principle is that if the subject matter of the legislation is not peculiar to the political subdivision dealt with by the applicable constitutional provision, the existing plenary power of the General Assembly continues.

265 S.C. at 183-187.

A court considering the issue which you have raised and following the reasoning in Kleckley would probably note the geographic area encompassed by the District as well as the powers and duties of the district's governing body specified in Section 5 of Act No. 876 of 1966. A court could reasonably conclude that the powers, duties, functions and responsibilities of the District and its governing body are not peculiar to a county, particularly since municipal fire departments and volunteer fire departments provide the same services as the District in other parts of the State. While we cannot second-guess the court, we believe there is a reasonable basis for a court to conclude that an amendatory act of the General Assembly for the Murrells Inlet - Garden City Fire District would not violate Article VIII, Section 7 of the State Constitution.

This Office, by an opinion dated February 5, 1985, examined an act of the General Assembly relating to a special purpose district comprising portions of three counties and concluded that the act was most probably constitutional. That opinion discussed in detail Kleckley v. Pulliam, supra, Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976), and the concept of an act passed for a region of the State rather than for a single county or portions thereof. A copy of that opinion is enclosed for your review.

We trust that this information and discussion will satisfactorily respond to your inquiry. If we may provide additional assistance or clarification, please advise us.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

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