RICHARDSON CH 40

Library
1632

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA S C 29211
TELEPHONE 803-758-3970

June 13, 1985

The Honorable Joyce C. Hearn
Member, House of Representatives
404-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:

In a letter to this Office you requested that we review a prior opinion dated April 11, 1985 dealing with the question of whether or not the Wildewood subdivision can contract with Richland County for additional law enforcement protection and services. The subdivision would pay a particular amount in return for such services. The opinion concluded that the County was not authorized to enter into such a contract with the subdivision.

In response to your request, we have reviewed such question and the opinion which was issued. While there is not a great deal of authority dealing with the question addressed, after a careful review of the authority which does exist, we find it to be supportive of the conclusion reached in the April 11th opinion. Moreover, as pointed out in the opinion, the April 11th opinion is consistent with a prior opinion of this Office dated February 10, 1983 in which it was stated that a municipality's authority to contract to provide law enforcement protection is limited to contracts with areas outside the municipality's corporate limits. Therefore, the April 11th opinion remains the opinion of this Office.

Referencing the previous opinion, you have raised several additional questions. You have specifically asked whether action could be taken by the General Assembly through the enactment of legislation to permit the type contractual agreement referenced above. As to the enactment of legislation generally, the plenary authority of the General Assembly with

REQUEST LETTER

respect to the enactment of legislation is well-recognized. Floyd v. Parker Water and Sewer Sub-district, et al., 203 S.C. 276, 17 S.E.2d 223 (1941). Consistent with such recognized authority, legislation could probably be enacted so as to permit the type contractual arrangement discussed in the April 11th opinion. Such legislation should, of course, be general, rather than local in nature, and, if enacted by the General Assembly, should take into account those existing statutes (such as § 23-13-70) referenced in the earlier opinion. Any such decision would, of course, be a matter for the General Assembly to determine.

You also asked whether a county council is authorized to create a special tax district for law enforcement services in a specific area of a county. This was expressly referenced and briefly discussed in our April 11, 1985 opinion. See, note 1, page 2.

To elaborate more fully, Section 4-9-30(5) of the Code (Home Rule Act) provides in pertinent part as follows:

> ... each county government ... shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:
> (5) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to appropriations for ... public safety, including police and fire protection ... and to provide for the regulation and enforcement of the above; provided, however, that prior to the creation of any special tax district for the purposes enumerated herein, one of the following procedures shall be required... . (Emphasis added.)

Subsection 5 of Section 4-9-30 then sets forth the procedure for the creation of a special tax district. Clearly, as stated earlier, a county could, pursuant to the express terms of the statute, create a special tax district for police protection. And, the county would possess regulatory authority sufficient to bestow the district with the powers necessary to carry out that function. See, Op. Atty. Gen., June 12, 1984. Any such decision would be a matter for county council to determine.

You have not specified the actual means for providing police protection should such a tax district be created pursuant to the Home Rule Act, and we do not attempt to address all of the various means available. We would mention that Article VIII, § 13 of the South Carolina Constitution and § 6-1-20 of the Code authorize a county and another political subdivision to contract with one another to provide the joint administration of services such as law enforcement. See, Op. Atty. Gen., May 17, 1978. We would caution again, as we did in the April 11, 1985 opinion, that any contract between the county and a special tax district created for law enforcement purposes should take into account § 23-13-70, which mandates that sheriff's deputies patrol the entire county. Thus, even where the county decides to contract with a separate political subdivision such as a tax district (as authorized by Article VIII, § 13), care should be taken in drafting any such contract, not to limit the sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county. In short, any such contract must be consistent with the terms of Section 23-13-70.

We would call one other statute to your attention in this regard. Section 4-9-30(5)(d) provides in pertinent part:

> provided, further, that if any appropriation relative to police protection would result in reorganization or restructuring of a sheriff's department or, if any appropriation relative to police protection would limit the duties of the sheriff or provide for police protection duplicating the duties and functions presently being performed by a sheriff, it shall not take effect until the qualified electors of the county shall first approve the appropriation by referendum called by the governing body of the county.

Again, care should be had in the drafting of any contract between the special tax district and the county to see that this statute is fully complied with. These contractual matters should be discussed fully with the county attorney who would be better able to evaluate the various legal ramifications in such a contractual agreement.

You have also questioned whether the creation of a special tax district for law enforcement services would contravene the Fourteenth Amendment (Equal Protection Clause). Of course, it

is well recognized that the General Assembly possesses the inherent power to create or provide for the creation of a special tax district. Johnson v. Bd. of Park Commrs., 174 N.E. 91 (Ind. 1930). Such inherent authority includes the power to provide for the creation of police districts or those providing law enforcement services. See, Edgecomb Steel Co. v. Gantt Fire, Sewer and Police Dist., 257 S.C. 21, 183 S.E.2d 567 (1971). Courts often uphold the creation of such districts; but there must be uniformity of taxation within the district itself and the purpose to be accomplished by the tax must pertain to the district taxed. 84 C.J.S., Taxation, § 38.

Moreover, it has been held that the particular ordinance creating such a special tax district must also be "reasonable and not capricious nor arbitrary and that the taxation imposed reasonably reflect[s] differences in services." Hart v. Columbus, 125 Ga.App. 625, 188 S.E.2d 422, 429 (1972). Courts will examine an ordinance closely to insure that the ordinance is neither arbitrary nor unreasonably discriminatory, based upon criteria such as whether there is a specific need for increased services in a particular geographical location or whether other locations also benefit from the increased services in a given area. Id. Of course, only a court could determine if a particular ordinance is drafted or fashioned in such a way as to meet the foregoing constitutional requirement of reasonableness. Such must be decided on a case by case basis.

Finally, you have asked whether the conclusion reached in the April 11th opinion would be different if instead of contracting for special law enforcement services, additional county deputies were hired to provide law enforcement services in a specific area. The cost of such additional deputies would be paid by residents of the area benefiting from the additional deputies. For the reasons cited in the April 11 opinion, and as reiterated above, your suggested procedure would not change the conclusion of the previous opinion. Moreover, as stated above and as mentioned in the previous opinion, Section 23-13-70 of the Code requires that deputy sheriffs of a particular county "... shall patrol the entire county ..." in the manner specified by such statute. Thus, unless the statute is amended its requirements would have to be met. The assignment of deputies within the county remains within the sheriff's discretion. This aspect is discussed more fully above.

CONCLUSION

1. The April 11 opinion remains the opinion of this Office.

2. The General Assembly could, by statute, enact legislation authorizing the type of contractual arrangement discussed in the April 11 opinion. Any such decision would, of course, be a matter for the General Assembly to determine. Such legislation would have to be scrutinized by a court for possible equal protection concerns. Only a court could finally determine if a statute is drafted in such a way as to meet the constitutional requirement of reasonableness.

3. As noted in the April 11 opinion, a county could, pursuant to the express terms of § 4-9-30, create a special tax district for police protection. Any such decision would, of course, be a matter for the county to determine.

4. If a special tax district is created and contracts with the county for law enforcement services, care should be taken in drafting any such contract not to limit the Sheriff's discretion in the placement of his deputies or the providing of adequate personnel in other areas of the county. Particularly, such contract should be consistent with §§ 23-13-70 and 4-9-30(5)(d).

5. Although courts generally uphold the creation of special tax districts, arguments of unequal treatment can still be made as to the creation of a special tax district for the provision of additional law enforcement services. Any ordinance creating such a tax district must thus be scrutinized for its reasonableness in the same way that a statute would have to be scrutinized. See No. 2 above. Only a court can finally determine if an ordinance is drafted or fashioned in such a way to meet the constitutional requirement of reasonableness.

6. The conclusion of the April 11 opinion would not be changed by the fact that additional county deputies were hired to provide law enforcement services in a specific area where the cost of such additional deputies would be paid by residents of the area benefiting from the additional deputies.

7. Again, the opinion of April 11, 1985 is reaffirmed. The procedure set forth herein, i.e. enabling legislation by the

General Assembly or the creation of a special tax district, pursuant to § 4-9-30(5), were referenced in the April 11 opinion and are consistent therewith.

Sincerely,

Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions