9277/9827

ALAN WILSON
ATTORNEY GENERAL

February 12, 2015

James R. Freeland, Chairman
Board of Commissioners
Metropolitan Sewer Subdistrict
120 Augusta Arbor Way
Greenville, SC 29605

Dear Mr. Freeland:

Attorney General Alan Wilson has referred your letter dated August 21, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issues (as quoted from your letter):
As the Chairman of the Metropolitan Sewer Subdistrict ("Metro"), I am writing to you on behalf of the Metropolitan Sewer Subdistrict Commission (the "Commission"), the governing body of Metro. ... Metro is a special purpose district that is authorized to provide sewer collection services within an area that is explicitly described in its enabling legislation—Act No. 687 of 1969, as amended by Act No. 1842 of 1972 (collectively, the "Enabling Legislation"). Metro's boundaries are described as encompassing the entire area of the Greenville County Sewer Authority, but excluding any area within a number of adjoining municipalities. The description of Metro's boundaries concludes with the following statement:

> *No change hereafter in the boundaries of any of the excluded political subdivisions enumerated above shall enlarge or reduce the area included within the Subdistrict.*

The effect of this description of Metro's boundaries is that they directly abut those of each of its adjoining municipalities. Whenever any of these municipalities annex areas that fall within the boundaries of Metro, the policy of Greenville County (the "County") has been to administratively remove any annexed property from the boundaries of Metro and place it into the boundaries of the municipality. This policy eliminates the possibility for any boundary overlap between Metro and any adjoining municipality and removes these properties from Metro's tax base. Metro continues to provide sewer service to each of these annexed areas.

...

With this information in mind, I would respectfully request that you consider the following questions:

> *1. Given that the excerpted language in the Enabling Legislation explicitly permits Metro to maintain its boundaries and overlap its adjoining municipalities, is the application of this provision consistent with the Annexation Statutes?*
> *2. If Metro's boundaries and the boundaries of the adjoining municipalities are permitted to overlap, would any resulting overlap of the power to provide sewer service, or the power to levy taxes, violate any provision of South Carolina law?*

> *3. Is the County incorrect in its practice of administratively [by means of the county administrator or means other than by a quorum of county council] removing territory from the boundary of Metro where such territory is annexed by one of the adjoining municipalities?*

We will address each of your questions separately and in the order that they appear above.

Law/Analysis:
By way of background, most special purpose districts in South Carolina were created to provide water or sewer to a specific geographic area. Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

1. Whether or not the application of Act No. 687 of 1969 (and as amended in Act No. 1842 of 1972) is consistent with the Annexation Statutes (S.C. Code §§ 5-3-310 through 5-3-315), we look to statutory interpretation.[1] As this Office stated in a previous opinion:

> The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Atty. Gen., 1988 WL 485345 (December 1, 1988). Our State's Supreme Court addressed a similar question in Berry v. Weeks where it recognized special acts continue to be valid unless they are repealed or later legislation invalidates them. As the Court stated in that case, "[t]he interaction of counties with special purpose districts existing prior to home rule is indeed confusing." Berry v. Weeks, 279 S.C. 543, 548, 309 S.E.2d 744, 747 (1983).

Traditionally, the rule is the more specific statute will be construed as an exception to or a qualifier of the general statute. Wilder v. S.C. Hwy. Dept., 228 S.C. 448, 90 S.E.2d 635 (1955); Wooten ex rel. Wooten v. S.C. Dept. of Transp., 333 S.C. 464. 511 S.E.2d 355, 357 (1999); Spectre, LLC v. S.C. Dept. of Health & Envir. Control, 386 S.C. 357, 688 S.E.2d 844 (S.C. 2010). This Office believes in this case a court will apply the principle that where there are conflicting statutes, the later in time trumps. Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). When the Annexation Statutes were passed by Act No. 626 of 1988, the Acts establishing the boundaries of the special purpose district would have long been established, and we will presume the General Assembly was aware of this special purpose district and all others so affected in place at the time they passed the Annexation Statutes. Therefore, we believe a court will determine that where Metro's enabling legislation is inconsistent with the Annexation Statutes (as found in South Carolina Code Section 5-3-10 et seq.), the Annexation Statutes, as enacted latter in time, will prevail, and in such a case the special purpose district and municipality must formulate a plan pursuant to South Carolina Code Section 5-3-310(1) et seq. For further analysis, see our discussion of Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961).

[1] The Annexation Statutes are discussed in further detail in the answer to Question #2 below.

To further address your first question, let us begin by noting that South Carolina has recognized a municipality may annex property within a special purpose district causing an overlap of two or more political subdivisions. See, e.g., S.C. Code § 6-11-435 (recognizing "overlapping political subdivision[s]"); S.C. Const. art. VIII, § 16 (authorizing the continuation of water, sewer and other utilities by a municipality even after consolidation of a political subdivision); St. Andrews Public Service District v. City Council of the City of Charleston, 349 S.C. 602, 564 S.E.2d 647 (2002) (citing Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961) (a municipality may annex territory within a public service district)); Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961) (special purpose districts overlap with each other and even municipalities); Op. S.C. Atty. Gen., 1971 WL 22477 (April 13, 1971). As the South Carolina Supreme Court stated in Watson v. City of Orangeburg, 229 S.C. 367, 375, 93 S.E.2d 20, 24 (1956), regarding taxes, "[t]he power of taxation being an attribute of sovereignty vested in the legislature subject to constitutional restrictions, taxes can be assessed and collected only under statutory authority." The South Carolina Constitution grants the General Assembly authority to "vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including special purpose districts, public service districts, and school districts ...." S.C. Const. art. X, § 6. It is well established the South Carolina General Assembly has chosen to grant counties the authority to assess and levy taxes, even at various rates dependent on the service, as provided by the following section of South Carolina Code § 4-9-30:

> ...
> (5)(a) 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 and level of governmental services provided and make appropriations for functions and operations of the county, ...

S.C. Code § 4-9-30 (5)(a) (1976 Code, as amended). As our State's Supreme Court cited in Sloan v. Greenville Hosp. System:

> *See Wagener v. Smith*, 221 S.C. 438, 445–46, 71 S.E.2d 1, 4 (1952) (" '[T]here cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges.' Dillon, Municipal Corporations, (5th Ed.), Vol. I, Sec. 354, page 616.... The foregoing inhibition does not prevent the formation of two municipal corporations coextensive in area for different purposes."); S.C. Code § 6–11–435(B) (2004) (codifying the "overlap rule").

Sloan v. Greenville Hosp. System, 388 S.C. 152, 162, 694 S.E.2d 532 (2010). South Carolina Constitution states in Article X, Section 6 that:

> ... Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed....

> The General Assembly shall establish, through the enactment of general law, and not through the enactment of local legislation pertaining to a single county or other political subdivision, the method of assessment of real property within the State that shall apply to each political subdivision within the State....
> Whenever there is a merger of governments authorized under Section 12 of Article VIII, tax districts may be created, based upon the services rendered in each district, but tax levies must be uniform in respect to persons and property within each such district.

S.C. Const. art. X § 6. Therefore, since our courts have recognized the overlapping of two or more political subdivisions, that would inherently imply overlapping taxation authority (and fee assessment authority) as long as the tax (or fee) was for different services, thus allowing overlapping taxation authority not duplication of taxation so as not to violate South Carolina Constitution article X, § 6.[2] Id.; S.C. Const. art. X, § 6; S.C. Code § 6-11-435; Op. S.C. Atty. Gen., 1972 WL 25394 (July 18, 1972). See the answer to Question Number 2 for a further discussion on overlapping of taxation authority and fees.[3]

2. As stated above, your second question asks "If Metro's boundaries and the boundaries of the adjoining municipalities are permitted to overlap, would any resulting overlap of the power to provide sewer service, or the power to levy taxes, violate any provision of South Carolina law?" By way of background, the South Carolina Constitution is clear in authorizing the General Assembly to regulate public and private utilities. S.C. Const. art. IX, § 1. Let us begin by looking at Article VIII of the South Carolina Constitution, which states:

> Any incorporated municipality may, upon a majority vote of the electors of such political subdivision who shall vote on the question, acquire by initial construction or purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants.
>
> Any county or consolidated political subdivision created under this Constitution may, upon a majority vote of the electors voting on the question in such county or consolidated political subdivision, acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric; *provided* this provision shall not prohibit the continued operation of gas and electric, water, sewer or other such utility systems of a municipality which becomes a part of a consolidated political subdivision.

S.C. Const. art. VIII § 16. However, a county is required to obtain the consent of a special purpose district before it operates a sewage disposal system. S.C. Code § 44-55-1410(A). Section (A) of § 44-55-1410 states:

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[2] However, please see S.C. Code § 5-3-14 which allows the levy of taxes for bond obligations in addition to other taxes. S.C. Code §§ 5-3-14, 5-3-312; Op. S.C. Atty. Gen., 2012 WL 1377689 (March 30, 2012).

[3] Please note S.C. Code § 12-43-285 requires the governing body of a political subdivision to certify to the county auditor that the millage complies with all laws. Therefore while this opinion may conclude that overlapping political subdivisions create the overlapping, but not the duplication, of taxation, such a political subdivision would still be responsible for compliance in regards to its millage limits pursuant to law.

> (A) The governing body of each county of the State is authorized to acquire, construct, improve, enlarge, operate and maintain, within such county, facilities to provide water for industrial and private use and facilities for the collection, treatment and disposition of sewage, including industrial waste. No such facilities shall be provided by the county within the territory of any special purpose district or authority existing on March 7, 1973, authorized to provide such facilities or within the corporate limits of any incorporated municipality without the consent of the governing body of such municipality, special purpose district, or authority, as the case may be. Nothing herein contained is intended to authorize the levy of taxes.

Id.

Next, let us review some statutory authority, case law and opinions on the subject. A 1964 case stated that annexation of land to a municipality is a legislative function and that courts will rarely interfere with such a decision over objections of it being unnecessary, unreasonable or lacking benefit. Hollingsworth v. City of Greenville, 241 S.C. 378, 128 S.E.2d 704 (1962). A 1971 opinion from this Office concerning property within a special service district cited Tovey v. City of Charleston in support that there is no prohibition by our Constitution or laws against a municipality annexing property already within a special purpose district. Op. S.C. Atty. Gen., 1971 WL 22477 (April 13, 1971). In Tovey v. City of Charleston our Supreme Court also stated that a public service district did not meet the definition of a "municipal corporation" for purposes of annexation. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). Specifically, the Court stated that:

> It is true, as appellants argue, that special districts created for the purpose of furnishing water, sewerage, garbage collection, fire protection and other similar facilities, functions usually performed by incorporated towns and cities, have been referred to in some of our cases as municipal corporations with limited functions and have been held to be municipal corporations within the meaning of certain sections of our Constitution. Rutledge v. Greater Greenville Sewer District, 139 S.C. 188, 137 S.E. 597; Floyd v. Parker Water and Sewer Sub-district, 203 S.C. 276, 17 S.E.2d 223; Sanders v. Greater Greenville Sewer District, 211 S.C. 141, 44 S.E.2d 185; Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14. But it does not follow that such special purpose districts are to be regarded as municipal corporations in the primary sense of the term so as to bring them within all of our statutes and constitutional provisions pertaining to incorporated towns and cities.
>
> Turning now to our statute relating to the extension or reduction of the corporate limits of a municipality, Sections 47-11 to 47-24, inclusive, of the 1952 Code, it seems quite clear that this statute applies only to incorporated cities and towns.
> ...
>
> It is further contended that even if this [special purpose] district is not a municipal corporation within the meaning of our annexation statute, it is corporate territory organized under an act of the General Assembly whose area cannot be reduced nor its boundaries changed by annexing a part of it to an adjacent city or town. We have no statute or constitutional provision prohibiting a city from annexing

> territory lying within a governmental subdivision organized for a special purpose and we have found no decision holding that such territory may not be annexed. Town of Forest Acres v. Seigler, supra, 224 S.C. 166, 77 S.E.2d 900, cited by appellants, is not apposite for it was there sought to annex a portion of a municipality. In Wagener v. Smith, 221 S.C. 438, 71 S.E.2d 1, we held that the fact that the Legislature had established a township form of government for a certain area with powers similar to those devolved upon towns of similar size did not prevent the inhabitants of said area from thereafter incorporating same as a town under the general law. It would seem that under this decision the establishment of a special purpose district would not prevent an adjacent city from later annexing a part thereof. In some areas of the State there are overlapping special purpose districts. Some of them extend into incorporated towns and cities. Most of our large municipalities are surrounded by such districts. It has never been suggested that this would prevent such municipalities from extending their corporate limits.

Tovey v. City of Charleston, 237 S.C. 475, 480-482, 117 S.E.2d 872, 874-875 (1961) (emphasis added). As stated in a 1966 case, "[i]t has long been recognized that the legislature has inherent power to authorize assessment of property within a special taxing district for the purpose of defraying in whole or in part the cost of constructing local improvements." Newton v. Hanlon, 248 S.C. 251, 259, 149 S.E.2d 606, 611 (1966). In Knight v. Salisbury, our State Supreme Court stated:

> Section 7 [of Article VIII of the South Carolina Constitution] does not destroy the function of the special purpose district in a county. On the contrary, it in effect empowers county governments to create special purpose districts by giving them the power to tax on the basis of the governmental services provided. Historically the vast majority of special purpose districts in South Carolina were created in order to provide water or sewer services in areas within the county. This power is given to the counties by Section 16 of Article VIII. Accordingly, there is no longer a need for special state laws to create this type of district. The State Constitution, which until March 7, 1973 did not deny the plenary powers of the General Assembly in this area, has now been changed. Those plenary powers are now curtailed by the prohibition of special laws for a specific county.

Knight v. Salisbury, 262 S.C. 565, 573-574, 206 S.E.2d 875, 878-879 (1974). A 1980 case concluded that reading South Carolina Code § 5-7-60 (authorizing a municipality to extend its services into areas outside of the municipality) in conjunction with South Carolina Code § 58-5-30 (denying the Public Service Commission authority to interfere with public utilities owned by a municipality) authorized a municipality to extend its service outside of the municipality without permission from the Public Service Commission. Glendale Water Corp. of Florence, Inc. v. City of Florence, 274 S.C. 472, 265 S.E.2d 41 (1980). Moreover, South Carolina Code § 58-5-30 regarding the Public Service Commission states:

> Except as provided in Article 23, Chapter 9 of Title 58, nothing contained in Articles 1, 3, and 5 of this chapter shall give the commission or the regulatory staff any power to regulate or interfere with public utilities owned or operated by or on behalf of any municipality or regional transportation authority as defined in Chapter 25 of this title or their agencies.

South Carolina Code § 5-7-70 authorizes municipalities to contract its water and waste disposal services to areas outside of the municipality. South Carolina Code § 5-31-50 gives the right to a municipality to give "the exclusive franchise of furnishing water or waste disposal service to such cities and towns and the inhabitants thereof for a period not exceeding forty years." South Carolina Code § 5-31-610 authorizes any city or town, among other things, to condemn existing waterworks and build sewer and water plants while South Carolina Code § 58-27-640 authorizes the Public Service Commission to designate areas of service for electricity supplies outside the corporate limits of municipalities. Our Supreme Court has also interpreted § 5-31-610 to authorize a municipality to purchase a waterworks. Enterprise Real Estate Co. v. City Council, 107 S.C. 492, 93 S.E. 184 (1917). Act 431 of 1984 attempted to "maintain the assignment of electric service territories by the Public Service Commission over areas having been assigned electric suppliers under Section 58-27-640, even when the area becomes incorporated or annexed to an existing city or town." 1984 S.C. Acts 431. In 1985 the Court ruled that a municipality could not eject preexisting suppliers of electricity without statutory authority for eminent domain. City of Abbeville, v. Aiken Elec. Coop., Inc., 287 S.C. 361, 338 S.E.2d 831 (1985). City of Abbeville involved multiple cities ousting electric cooperatives by eminent domain and sought a declaratory judgment declaring Act 431 of 1984 unconstitutional. Moreover, in 2004, our Supreme Court appears to have resolved the question of a utility territory served by a special purpose district being annexed into a municipality. S.C. Elec. & Gas Co. v. Town of Awendaw, 359 S.C. 29, 596 S.E.2d 482, (2004) (citing City of Abbeville v. Aiken Elec. Coop., Inc., 287 S.C. 361, 338 S.E.2d 831 (1985)). In S.C. Elec. & Gas Co. v. Town of Awendaw, the Court analyzed whether a town could impose a franchise fee on a utility company serving property annexed into the town using the City of Abbeville, in addition to other cases, as its guide. Id.

Furthermore, a 1988 opinion by this Office addressed similar questions regarding issues between a special purpose district and a municipality which acquired land within the statutorily-granted territory of the municipality. Op. S.C. Atty. Gen., 1988 WL 383504 (March 8, 1988).[4] In that opinion, this Office cautioned the municipality in requiring the special purpose district to enter into a franchise agreement with the municipality since the General Assembly gave the special purpose district specific statutory authority for its jurisdiction. Id. The opinion also discouraged the municipality from extending new lines into areas already being served by the special purpose district and encouraged legislative clarification. Id. However, after the 1988 opinion, the Legislature addressed the questions discussed in our 1998 opinion when it passed the Annexation Statutes in Sections 5-3-300 through 5-3-315. As a part of the annexation statutes, a municipality is required to form a plan as to whether the municipality will provide direct service to the area annexed or whether it will contract with the special purpose district to continue the service. S.C. Code § 5-3-312. If a plan is not reached between the special purpose district and the municipality, they must formulate a committee to formulate a plan. S.C. Code § 5-3-311.[5]

Concerning the annexation of a special purpose district into a municipality, our law states:

> When all or part of the area of a special purpose district as defined in Section 6-11-1610 or a special taxing district created pursuant to Section 4-9-30 or Section 4-19-10, et seq. or an assessment district created pursuant to Chapter 15 of Title 6, or any other special purpose district or special taxing or assessment district is annexed into a municipality under the provisions of Section 5-3-150 or 5-3-300, the following provisions apply:

[4] For a further discussion see Answer #3.

[5] It is this Office's understanding that many special purpose districts continue service after annexation not pursuant to any written plan, which we read to be consistent with S.C. Code §§ 5-3-310(2) and 5-3-311(7).

> (1) At the time of annexation or at any time thereafter the municipality may elect at its sole option to provide the service formerly provided by the district within the annexed area. The transfer of service rights must be made pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.
> (2) Until the municipality upon reasonable written notice elects to displace the district's service, the district must be allowed to continue providing service within the district's annexed area.
> (3) Annexation does not divest the district of any property; however, subject to the provisions of item (4) below, real or tangible personal property located within the area annexed must be transferred to the municipality pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.
> (4) In any case in which the municipality annexes less than the total service area of the district, the district may, at its sole discretion, retain ownership and control of any asset, within or without the annexed area, used by or intended to be used by residents within the district's unannexed area or used or intended to be used to provide service to residents in the unannexed area of the district.
> (5) Upon annexation of less than the total area of the district, the district's boundaries must be modified, if at all, by the plan formulated pursuant to the provisions of Sections 5-3-300 through 5-3-315. The plan must specify the new boundaries of the district.

S.C. Code § 5-3-310. Therefore, the law is clear that a municipality gets to decide at its sole option what services, if any, it will provide to the newly annexed area. South Carolina Constitution Article VIII, Section 15 requires a municipality to give the right before any water, sewer or gas works is built or lines laid within the municipality and for a county to give the right before any waterworks is built or water or sewer pipes laid.

This Office addressed a similar question in 2012 when we opined, among other things, that a municipality and two special purpose districts were required to develop a plan before the municipality could collect taxes on property it annexed from the districts. Op. S.C. Atty. Gen., 2012 WL 1377689 (March 30, 2012). The 2012 opinion also concluded that while Section 5-3-312(6) required a plan so that residents would not be taxed and assessed by both a municipality and a special purpose district for the same service, a court would not permit avoiding creating a plan in order to circumvent the requirement of a plan. Op. S.C. Atty. Gen., 2012 WL 1377689 (March 30, 2012).[6] This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). As this is our policy, and we have found no law to the contrary, we stand by the conclusions reached in the 2012 opinion.

We further state for clarification that we do not believe a court will allow taxation (or a fee) for the same "service" (whether that be water, sewer or other) by both the municipality and the special purpose district

[6] Please see Footnote # 5.

but will find overlapping taxation authority.[7] S.C. Const. art. X, § 6; S.C. Code § 6-11-435. Moreover, in 1979 our State Supreme Court held that special service districts must comply with this provision of the Constitution requiring uniform taxation even where property that was outside of the boundary of a special purpose district that is incorporated into the district pays a "tax" which differs from the existing district. Clenese Corporation v. Strange, 272 S.C. 399, 252 S.E.2d 137 (1979). Please see the answer to Question Number 1 for a further discussion on overlapping political subdivisions and overlapping taxation authority.[8]

3. Finally, in your third question you ask "*[i]s the County incorrect in its practice of administratively [by means of the county administrator or means other than by a quorum of county council] removing territory from the boundary of Metro where such territory is annexed by one of the adjoining municipalities?*" Our State Supreme Court gave a noteworthy history in the Berry case decided in 1983 concerning similar issues to your third question related to a county's removal of territory within a special purpose district. Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). In that case the Court stated:

> First, we shall examine the history of our constitutional provisions relating to waterworks. In *Mauldin v. Greenville,* 33 S.C. 1, 11 S.E. 434 (1890), the Court held that operation of certain utilities by cities and towns would be *ultra vires.* After *Mauldin,* the constitution was amended to allow cities and towns to operate water systems. (former Article VIII, § 5). The purpose of that amendment was to correct the *ultra vires* problem rather than to give municipalities a preferred status over other entities furnishing the services. *City of Orangeburg v. Moss,* 262 S.C. 299, 204 S.E.2d 377 (1974).
>
> The language of new Article VIII, § 16, parallels that of former § 5. It, however, adds a paragraph empowering counties as well as cities to operate utilities. Section 16 changes the former situation that such action by counties would be *ultra vires. See Doran v. Robertson,* 203 S.C. 434, 27 S.E.2d 714 (1943).
>
> This interpretation of § 16 is also consistent with § 1, which states:
>
> > The powers possessed by all counties, cities, towns, and *other political subdivisions* at the effective date of this Constitution shall continue until changed in a manner prescribed by law. (emphasis added).
>
> Section 1 thus protects special purpose districts until the legislature makes a change.
> Section 7 of Article VIII prohibits special legislation for particular counties. Therefore, the General Assembly cannot create new special purpose districts to operate solely within a county. Counties implicitly have the power to create them. *Knight v. Salisbury,* 262 S.C. 565, 206 S.E.2d 875 (1974). Nevertheless, special

[7] While we recognize the courts have made distinctions between taxes, fees and assessments, this opinion does not go into detail thereof but merely notes they exist. Please also note the exception for bond obligations in S.C. Code §§ 5-3-14, 5-3-312 and as further discussed in Op. S.C. Atty. Gen., 2012 WL 1377689 (March 30, 2012).

[8] While there are many other sources on these subjects, this opinion is intended to be an overview that highlights some of the applicable statutes, cases and opinions. This Office acknowledges there are numerous other sources not able to all be noted in this opinion and would encourage further examination.

> acts remain valid until repealed or superseded by general law. *Neel v. Shealy,* 261 S.C. 266, 199 S.E.2d 542 (1973)....
>
> The legislature has passed several statutes since the home rule amendments which support the continued viability of special purpose districts. South Carolina Code Ann. § 6–11–420 (1976) authorizes counties to enlarge, diminish, or consolidate existing districts but does not allow them to abolish the districts.
>
> Section 44–55–1410 allows counties to operate water systems within special purpose districts, but only with district consent.
>
> Section 4–9–80 states that preexisting special purpose districts shall continue to function until they are dissolved by Act of the General Assembly after a favorable referendum of the district's voters.
>
> As noted above, § 6–11–420 empowers counties to diminish the size of special purpose districts located within the county. Section 6–11–430 indicates that a county should change the size of a district by a resolution ordering a public hearing. Section 6–11–440 sets forth the required contents of the Notice of Public Hearing. The notice in the case at bar was defective in several respects. Subsection (3) requires a description of the nature of the proposed change. The notice ambiguously stated that the change would permit the county to combine water and sewer service in the eastern end of Summerville. Summerville is an incorporated municipality not within the Authority's service area.
>
> ...
>
> The interaction of counties with special purpose districts existing prior to home rule is indeed confusing. Yet, until the legislature passes a general law affecting the existence of these districts, counties lack the power to abolish them.

Berry v. Weeks, 279 S.C. 543, 546-548, 309 S.E.2d 744, 746-747 (1983). As discussed in Berry, the county would have to comply with the requirements under the law in order to change the boundaries of a special purpose district. Id. Otherwise, special purpose districts have authority to continue until dissolved by referendum or otherwise modified. S.C. Code § 4-9-80. Moreover, as referenced in Berry, the law is clear in authorizing a county board to diminish the size of a special purpose district when it states in Section 6-11-420 "[t]he county boards of the several counties of the State are authorized to enlarge, diminish or consolidate any existing special purpose districts located within such county and authorize the issuance of general obligation bonds by such special purpose district by the procedure prescribed by this article." In regards to the "county boards" referenced in the statute, they are defined as "the governing bodies of the several counties of the State as now or hereafter constituted." S.C. Code §§ 6-11-410, 6-11-420. Thus, we believe, based on the plain language in the statutes, that a court will determine a "county board" would require the governing body such as county council (or equivalent thereof[9]), not merely an administrator, to act to "enlarge, diminish or consolidate" a special purpose district within the county. Id. Moreover, as referenced above, in a 1988 opinion we stated:

> Section 6–11–410 et seq. of the Code provides a mechanism whereby the service areas of special purpose districts created prior to March 7, 1973 may be enlarged,

[9] There is recognized in South Carolina a form of county government with a board of commissioners. S.C. Code § 4-9-1010 (1976 Code, as amended).

> diminished, or consolidated, by action of the appropriate county council. It must be noted, however, that the Supreme Court in Berry v. Weeks, supra, basically stated that a county may not diminish a special purpose district's service area to the point of non-existence. Too, the diminishing of the service area to the extent that the county could fully assume the functions of the special purpose district was deemed not to be proper.

Op. S.C. Atty. Gen., 1988 WL 383504 (March 8, 1988). As to how a court would handle a situation where a county reduced the size of a special purpose district without following the statutory requirements, we suggest you look to Berry for guidance. While the special purpose district you represent may not agree with a decision to decrease its boundaries, there is a provision allowing a person affected by the action of the county board to challenge such action within a certain time period. S.C. § 6-11-480.[10] As you are likely aware and as you state is already the case in your situation, a special purpose district whose size is decreased may be authorized to provide water, sewer and fire protection to territory outside of the district. S.C. Code §§ 6-11-110, 6-11-435.

Conclusion: As discussed above, counties have statutory authority to diminish the boundaries of a special purpose district by action of the county board. This Office believes a court will find the county board is defined as the governing body of the county, which we believe a court will interpret as the county council or equivalent thereof. Separate and distinct from that, when a municipality annexes property already within a special purpose district, it may choose to provide services to the newly annexed area, but if it does so choose, it must develop a plan with the special purpose district. We believe a court will find that two or more political subdivisions may overlap and that overlap could cause an overlap of authorization to tax pursuant to South Carolina Constitution article X, §6, but there may not be duplication of taxation so as to violate South Carolina Constitution article X, §6. Nevertheless, these issues are complex, and there are many other sources and authorities you may want to refer to for a further analysis. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law can definitively interpret statutes. S.C. Code § 15-53-20. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

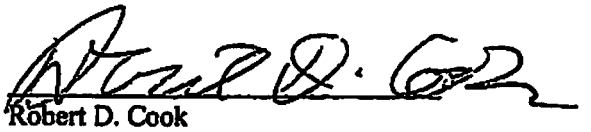
Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

[10] However the challenger would have to meet the definition of "person" in addition to all other requirements.

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General