

1984 WL 249942 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1984

*1 The Honorable Mickey Burriss
Member
House of Representatives
Post Office Box 9186
Columbia, South Carolina 29290

Dear Representative Burriss:

By your letter to Attorney General Medlock of July 13, 1984, you have asked two questions concerning the Capital View Fire District in Richland County:

1. Can Richland County Council cut off funds under present law to the Capital View Fire District?
2. Is the resolution recently passed by County Council directing the Election Commission to issue a referendum on the next ballot for the voters decision whether or not the Capital View Fire District shall be dissolved, sufficient to dissolve this fire district, or is the Richland County Delegation required to approve this resolution?

It is believed that the Capital View Fire District was formed in the 1960s pursuant to [Section 6-11-10 et seq., Code of Laws of South Carolina \(1976\)](#). No Act of the General Assembly establishing the District has been located, and no ordinance of Richland County has been located. In 1964, by Act No. 1345, the General Assembly empowered the District to borrow money. Thus, the exact legal status and how the District was formed are unclear, at best. However, by Act No. 295, 1979 Acts and Joint Resolutions, the General Assembly provided for dissolution of the District upon a favorable referendum and a vote by Richland County Council to assume the functions and obligations of the District; a copy of Act No. 295 is enclosed herein. The General Assembly and Richland County Council are proceeding pursuant to [Section 4-9-80 of the Code](#), which provides in part that such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts . . . except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum.

This method of dissolving a special purpose or public service district has been recognized by our Supreme Court in [Berry v. Weeks](#), Op. No. 22007 (November 28, 1983) and [Michelin Tire Corporation v. Spartanburg County Treasurer](#), Op. No. 22055 (March 6, 1984).¹ It would appear that the District is being abolished in accordance with the requirement of [Section 4-9-80 of the Code](#).

Funding for Capital View Fire District has, in the past, been appropriated by Richland County Council and has ranged from two-and-one-half to five mills. Council apparently did not wish to fund the District this year but may later decide to fund the District from the county's contingency fund, as the Ballentine and Horrell Hill districts have been funded previously. There is no provision in [Section 6-11-10 et seq.](#) requiring the county to fund a special purpose or public service district, nor in the home rule statutes, [Section 4-9-10 et seq.](#) of the Code. The general rule would be that county council has reasonable discretion in the exercise of its power to appropriate county funds. [See 20 C.J.S. Counties](#), § 235. It therefore appears that Richland County Council could exercise its discretion and not appropriate funds for the District in the county appropriation ordinance.

*2 We must caution that the particular circumstances surrounding the District make this response not free from doubt. Act No. 1345 of 1964, in Section 2, provides for the levy of taxes by the Auditor and collection by the Treasurer of Richland County should the District have insufficient revenues to repay indebtedness incurred according to the Act. This Office does not know whether such a levy and collection may have been authorized for this or previous years; the existence of such a debt repayment would possibly mandate a different response to your question. Too, agreements between the county and the District, of which we are unaware, may exist. If the District has been created by an act of the General Assembly or an ordinance of the county and the creating documents could be located, a specific fiscal arrangement between the county and the District may be provided. Absent any of the above factors being present, the general rule, stated above, should be applied.

The Richland County Attorney's Office has researched the Capital View Fire District extensively and may be able to provide you with additional information. Otherwise, we hope that the information contained herein will be useful to you. Please advise if you need additional information or clarification.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

1 See, however, Ops. Atty. Gen. dated August 7, 1981 and November 23, 1983.

1984 WL 249942 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.