1984 WL 250011 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 14, 1984

***1** Joseph H. Earle, Jr., Esquire
Greenville County Attorney
100 Courthouse Annex
Greenville, South Carolina 29601

Dear Mr. Earle:
By your letter of October 17, 1984, you have referred to two recent acts of the General Assembly and have asked the opinion of this Office on whether these acts may be violative of Article VIII, Section 7 of the State Constitution, in that the acts appear to be 'laws for a specific county.' While the answer to your inquiry is not completely free from doubt, it is the opinion of this Office that the two acts could be found to be unconstitutional by the courts of this State.

You have advised this Office that the Gowensville Fire District was originally established in Greenville County by Ordinance No. 644, adopted by Greenville County Council on September 19, 1978. The ordinance establishing the District defined boundaries for the District but gave the District no tax levy. We would note at the outset that Greenville County was given authority to establish such a district by a portion of the Home Rule Act now codified as Section 4-9-30(5), Code of Laws of South Carolina (1976 & 1983 Cum. Supp.). As the Supreme Court stated in Knight v. Salisbury, 262 S.C. 565, 206 S.F. 2d 875 (1974), the power of the General Assembly to create such special purpose districts was curtailed by the adoption of Article VIII, Section 7 of the State Constitution; otherwise, the county governing body would have little or no power left to exercise.

By Act No. 346, 1982 Acts and Joint Resolutions, the General Assembly created the Gowensville Fire District in portions of Greenville and Spartanburg Counties, establishing certain boundaries. You indicate that the boundary between the Gowensville Fire District and the Lake Cunningham Fire District had been agreed upon by the commissioners of the two districts. Then, in 1983, the General Assembly enacted Act No. 35, expanding the boundaries of the Gowensville Fire District.

Finally, you have advised that Greenville Compty Council adopted Ordinance No. 1136 on June 7, 1983, establishing boundaries of the Gowensville Fire District coinciding with the boundaries established in Act No. 35 of 1983 by the General Assembly.

You have asked this Office whether the General Assembly can lawfully expand, in one county, the boundaries of a multi-county district which it has created, or whether such action is within the exclusive jurisdiction of the governing body of that county. In other words, does such action of the General Assembly fall within the proscription of Article VIII, Section 7 of the State Constitution relative to 'laws for a specific county?' Your opinion is that such an act as Act No. 35 would be an act for a specific county even if the act describes a district within two counties, as such an act achieves the same result as if such an act described only the annexed area. We believe a court faced with the issue could reach the same conclusion.

***2** It must be pointed out that all acts of the General Assembly are presumed to be constitutional by the courts. The invalidity of an act must appear beyond a reasonable doubt. Trustees of Wofford College v. City of Spartanburg, 201 S.C. 315, 23 S.E. 2d 9 (1943). Because only a court can declare a statute or an act unconstitutional, this Office can only advise as to potential constitutional problems. Furthermore, irrespective of those potential problems, such acts would remain valid acts unless declared invalid by the courts, or are repealed or superseded by other laws. See, Berry v. Weeks, 279 S.C. 543, 309 S.E. 2d 744 (1983).

Article VIII, Section 7 of the State Constitution provides in part that '[n]o laws for a specific county shall be enacted . . ..' This section has been interpreted to preclude the General Assembly from creating a special purpose district after the effective

date of the section, Knight v. Salisbury, supra, or from enacting legislation for an already-existing special purpose district. See, Berry v. Weeks, supra; Michelin Tire Corporation v. Spartanburg County Treasurer, Opinion No. 22055, filed March 6, 1984; Richardson v. McCutchen, 278 S.C. 117, 292 S.E. 2d 787 (1982); Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E. 2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.F. 2d 228 (1976); Kleckley v. Pulliam, 265 S.C. 177, 217 S.E. 2d 21 (1975); and Spartanburg Sanitary Sewer District v. City of Spartanburg, Opinion No. 22159, filed August 21, 1984. On the basis of these cases, it would appear that Act No. 35 of 1983, standing alone, could be found to be violative of Article VIII, Section 7 as it is an act pertaining only to the Greenville County portion of the Gowensville Fire District.

The actual answer to your question may depend upon a determination of the constitutional validity of Act No. 346 of 1982; if the act creating the Gowensville Fire District should be declared invalid, then Act No. 35 of 1983, modifying the boundaries would also be found to be of no effect. We believe that a court could conclude that Act No. 346 would be constitutionally defective and invalid, thus invalidating Act No. 35.

To understand the problems inherent in these two acts, it is necessary to review the history of special purpose districts in general. See especially Knight v. Salisbury, supra. Prior to the Home Rule Act, counties had no authority to provide services such as fire protection to the unincorporated areas of the particular county. Municipalities in many instances did not want to provide services outside their corporate limits; either such municipalities were unwilling to do so, or such extension of services was not economically feasible. Thus, special purpose districts were created by the General Assembly to provide the needed services to those persons residing in unincorporated areas; the legislature also provided a mechanism, by Section 6-11-10 et seq. of the Code, through which citizens could form their own special purpose districts. With the advent of home rule, however, counties are now empowered to provide such needed services, to establish service districts, and to levy taxes by districts in accordance with services received. Fire protection is among those services so authorized by Section 4-9-30(5), as noted above. Hence, not only is it constitutionally impermissible now for the General Assembly to create a special purpose district, it is also unnecessary and a usurpation of the county governing body's authority.

***3** As already discussed, the Gowensville Fire District was created by the General Assembly to serve portions of Greenville and Spartanburg counties. Prior opinions of this Office, addressing the constitutionality of legislation pertaining to special purpose districts involving more than one county, have said that such legislation would be constitutionally permissible, see, Op. Atty. Gen. dated May 4, 1983, and violative of the Constitution, see, Op. Atty. Gen. dated June 16, 1983. However, the present position of this Office, as expressed in an opinion dated January 18, 1984, is that the later opinions (dated June 16, 1983 and January 18, 1984) are probably the more correct expressions of the law on the matter.

The only guidance which we have at this time from the South Carolina Supreme Court on this issue is in two cases cited supra, Kleckley v. Pulliam and Tergerson v. Craver. It is certainly possible that if the Supreme Court were faced with the issue presented by your inquiry, the Court would interpret Kleckley and Article VIII, Section 7 as permitting local legislation dealing with multi-county special purpose districts without regard to the nature of the governmental services provided by the district. We think, however, that the proper interpretation of Article VIII, Section 7 would prohibit any special legislation dealing with a multi-county special purpose district which would perform a governmental function or provide a governmental service which could be done by the respective counties. See, Kleckley v. Pulliam, supra, 265 S.C. at 169, 217 S.E. 2d at 223. Thus, we believe a court could conclude that Act No. 346 of 1982, and as a result thereof Act No. 35 of 1983, would be invalid as violative of Article VIII, Section 7 of the State Constitution.

The response to your inquiry obviously cannot be free from doubt. We would recommend that judicial clarification of the issue be sought, or that legislation be enacted to clarify the matter.
Sincerely,

Patricia D. Petway
Assistant Attorney General

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