1984 S.C. Op. Atty. Gen. 310 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-132, 1984 WL 159938

Office of the Attorney General

State of South Carolina
Opinion No. 84-132
November 14, 1984

***1** The Honorable John T. Campbell
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Dear Mr. Secretary:
By your letter of September 28, 1984, you have asked this Office what would be considered a special purpose district under the terms of Act No. 488, 1984 Acts and Joint Resolutions. The definition of the term 'special purpose district' contained in the Act, at Section 6–11–1610, Code of Laws of South Carolina (1976), is broad and open-ended. The attached memorandum of authority sets forth in detail all of the factors which may be considered in determining whether an entity is a special purpose district; actual determination must be made on an individual basis, however.

The following are factors which are most frequently found in special purpose districts, including:
1. The purpose for which the district was established, whether single or general.

2. Whether the entity has corporate powers or duties.

3. How the governing body of the entity is chosen.

4. Whether the entity is empowered to issue revenue or general obligation bonds.

5. Whether the entity may levy tax assessments.

6. Whether the entity may issue notes or bonds.

7. How the entity was created.

8. Whether a county established the entity as a taxing district rather than a special purpose district.

This list is intended to offer guidance, and it should be noted that an entity could lack some of these factors and still be considered a special purpose district.

We hope that this letter and accompanying memorandum of authority will be beneficial to you in interpreting your responsibilities under Act No. 488. Please advise this Office if we may examine on an individual basis any particular entity about which you have a question.
Sincerely,

Patricia D. Petway
Assistant Attorney General

MEMORANDUM OF AUTHORITY

By your letter of September 28, 1984, you have asked this Office to advise you as to what would be considered a special purpose district You have referred to Act No. 488, 1984 Acts and Joint Resolutions, which requires that special purpose districts register with and make reports to the Secretary of State and appropriate county auditors. While the Act contains a definition of the term 'special purpose district,' it is not detailed enough to determine precisely which entities were intended to be covered by the Act. Thus, it is our intent to interpret the definition to give you additional guidance, to enable you to carry out your responsibilities under the Act.

PROVISIONS OF ACT NO. 488

Section 2 of Act No. 488, to be codified as Section 6–11–1610, Code of Laws of South Carolina, provides:
For the purposes of this article, 'special purpose district' means any district created by an act of the General Assembly or pursuant to general law and which provides any local governmental power or function including, but not limited to, fire protection, sewerage treatment, water or natural gas distribution, recreation, and means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6. Special purpose districts do not include any state agency, department, commission, or school district.

***2** In interpreting this definition, the primary objective is to determine and give effect to the legislature's intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). To determine legislative intent, it is helpful to examine not only the definition itself but also the title of the Act, legislative findings, language within the Act, and other relevant cases and statutes.

Legislative findings are suggestive of the legislature's intent in enacting legislation. City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395 (1936). The findings of Act No. 488 are as follows:
The General Assembly finds that special purpose districts serve a necessary and useful function by providing services to residents and property owners in the State. The General Assembly finds further that special purpose districts operate to serve a public purpose and that this public trust is best secured by certain minimum standards of accountability designed to inform the public and appropriate general purpose local governments of the status and activities of special districts. It is the intent of the General Assembly that this public trust be secured by requiring each independent special district in the State to register and report its financial and other activities. The General Assembly finds further that failure of an independent special purpose district to comply with the minimum disclosure requirements set forth in this act may result in action against officers of such district board.

Realizing that special purpose districts are created to serve special purposes, it is the legislative intent of this act that special purpose districts cooperate and coordinate their activities with the units of general purpose government in which they are located. The reporting requirements set forth in this act are the minimum level of cooperation necessary to provide services to the citizens of this State in an efficient and equitable fashion. It is not the intent of this act to confer budgetary power upon county councils for those independent special purpose districts which file financial and other activity information with the county auditor, unless otherwise provided by law.

Two suggestions of applicability of the act may be discerned within the legislative findings. The General Assembly distinguishes between districts organized for a special or single purpose and those which are organized for general local governmental purposes (such as a county or municipality). In addition, the General Assembly refers to 'independent special purpose districts.' The term 'independent' means 'not resting on something else for support' or 'self-sustaining.' Her Majesty Industries, Inc. v. Liberty Mutual Insurance Company, 379 F.Supp. 658, 661 (D.S.C. 1974). Thus, a criterion for applicability should be the separability of the district from a general purpose local governmental unit. See Op. Atty. Gen. dated September 26, 1984 (county library not a special purpose district).

***3** The title of an act is often useful in determining legislative intent. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). In part, the title of Act No. 488 provides:
AN ACT TO AMEND CHAPTER 11 OF TITLE 6, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SPECIAL PURPOSE OR PUBLIC SERVICE DISTRICTS, SO AS TO ADD ARTICLE 11 TO PROVIDE FOR THE DEFINITION OF SPECIAL PURPOSE DISTRICT, TO PROVIDE THAT THE GOVERNING BODY OF A SPECIAL PURPOSE DISTRICT MUST NOTIFY THE SECRETARY OF STATE AND THE AUDITOR OF THE COUNTY IN WHICH THE DISTRICT IS LOCATED OF THE EXISTENCE OF THE DISTRICT; . . ..

While it is not clear whether the General Assembly is referring to the subject area of Chapter 11 of Article 6 when mentioning 'special purpose or public service districts,' it should be noted that new Section 6–11–1620(c) contains the phrase 'public service district;' it thus appears that the General Assembly meant to equate public service districts and special purpose districts, to make the Act applicable to both, [1] suggesting a broad or liberal construction of the Act.

Language within the Act itself suggests a broad interpretation. Within the above-cited definition are included such special services or purposes as fire protection, sewerage treatment, water, natural gas, recreation, and rural community water districts, all traditionally considered to be special purpose districts. The General Assembly also included the phrase 'including, but not limited to,' to indicate that there could be districts providing special services which were not enumerated but to which the Act was also applicable. This language is not in and of itself determinative, however, since all factors must be considered: these same services may be provided by creation of a special tax district pursuant to Section 4–9–30(5) and, although a special tax district, the district would not be a special purpose district. It must be emphasized that the definition of a special purpose district cannot be over-generalized for this reason.

Further consideration may be given as to exactly what function or functions the district is empowered to carry out. While some functions were noted in the Act, other functions, typically local, are suggested in Section 4–9–30(5),
including, but not limited to . . . general public works, including roads, drainage, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; [and] libraries; . . .

As expressed in Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14 (1957), special purpose districts are 'concerned primarily with mere conveniences or other matters not so vital to the public welfare.' 232 S.C. at 524. South Carolina Supreme Court decisions have found the following types of special purpose districts: airport, bridge, drainage, highway, water, sewer, and recreation. McQuillin, in Municipal Corporations, has found the following types of districts: assessment, drainage, fire, housing, improvement, irrigation, levee, light and power, navigation, and school. It would appear that as long as a public purpose were being served, Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), almost any type of district short of a local, general purpose government could be a special purpose district. Again, a distinction must be made, considering all relevant facts, between a special purpose district and a taxing district.

***4** The notification form specified in Section 6–11–1620(B) gives clues as to what factors the General Assembly felt were important in determining which districts were to comply with the Act. Question 5 of the form asks for the citation of statutory authority creating the district; this authority could be local or general legislation by the General Assembly, or it could be the certified results of a referendum required by Chapter 11 of Title 6, for example. Item 7 requests the tax rate or fee charged; inferentially, such special purpose district would have the authority to levy an assessment or charge a fee, though absence of authority would not preclude a special purpose district from legally and actually being such a district. Under item 10, information is requested on indebtedness, bonded or otherwise; again, inferentially a district would be impowered to incur such indebtedness.

DECISIONS OF SOUTH CAROLINA SUPREME COURT

To further assist in defining a special purpose district, it is helpful to review decisions of the South Carolina Supreme Court concerning such districts. It has been noted in many cases that '[i]t is well-settled under a long line of decisions . . . that the Legislature is empowered to carve out a district from a territory of the State for the accomplishment of some public purpose.' Berry v. Milliken, 234 S.C. 518, 523–24, 109 S.E.2d 354 (1959). In discussing the Una Water District, the Supreme Court described the district as

a corporation or agency endowed with limited corporate functions . . . derived from the same source and exercised in substantially the same way as any other municipal corporation It is an arm of government created by the Legislature for a specific public purpose . . .. And we find nothing in the Constitution which takes from the Legislature the power to create a special district with limited powers.

Mills Mill v. Hawkins, 232 S.C. at 527. Furthermore, special purpose districts have been found to be, by the courts or the General Assembly bodies politic and corporate, Evans v. Beattie, 137 S.C. 496, 135 S.C. 538 (1926), exercising corporate powers, Berry v. Milliken, supra, with the capacity to sue and be sued, Evans v. Beattie, supra. Additionally, the authority to issue general obligation or revenue, bonds is another consideration. See Berry v. Milliken, supra; Bagnall v. Clarendon & Orangeburg Bridge District, 131 S.C. 109, 126 S.E. 644 (1925); Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1915); Wagener v. Johnson, 223 S.C. 470, 76 S.E.2d 611 (1953). Furthermore, such districts may be authorized to issue notes, Berry v. Milliken, supra, or levy tax assessments, Jackson v. Breeland, supra. The area served would not be a determinative factor since a special purpose district may be coterminous with a county's boundaries, Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982); may exist in two counties, Berry v. Milliken, supra; or may exist in a less than county-wide area, Cooper River Park & Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979).

DECISIONS FROM OTHER JURISDICTIONS

***5** Some of the criteria found in the above-cited cases have also been identified by courts in other jurisdictions considering similar districts. In Browning v. Hooper, 269 U.S. 396, 46 S. Ct. 141, 70 L.Ed. 330 (1926), the United States Supreme Court described a special purpose district:

[O]n the initiation of individuals signing the petition, a special district was carved out to furnish credit and to pay for specified improvements on designated roads wholly within the territory selected. The purpose was special, and the district will cease to exist as a body corporate upon the payment of the bond debt.

269 U.S. at 403, 70 L.Ed at 334. In Orr v. Kneip, 287 N.W.2d 480 (S.D. 1979), the South Dakota Supreme Court distinguished between a 'governmental purpose unit,' which exercises general governmental powers, and a 'special purpose unit' which disproportionately affects a definable class and exists for a special limited purpose. In holding the Chicago Transit Authority and the Chicago Housing Authority to be 'special districts,' the court in Chicago Transit Authority v. Danaher, 40 Ill. App. 3d 913, 353 N.E.2d 97 (1976) described a special district as 'a relatively autonomous local government which provides a single service. [It has] also been characterized as 'possessing a structural form, and official name, perpetual succession, and the right to make contracts and to dispose of property." 353 N.E.2d at 100. The characteristics of such a special district in Connecticut are described in Dugas v. Beauregard, 155 Conn. 573, 236 A.2d 87 (1967) as having a sense of a body politic; having and exercising governmental power; a geographic division the inhabitants of which are vested with power to discharge some function of government; being a prescribed area; having power to levy taxes and make appropriations; and possession of authority for subordinate self-government through officers selected by the district. While these districts in other states are denominated otherwise, the characteristic appear to be similar enough to those of special purpose districts in South Carolina to use their criteria to determine whether such a district exists.

OPINIONS OF THE ATTORNEY GENERAL

While no opinion of the Attorney General which defines a special purpose district has been located, there are three prior opinions which discuss factors present in special purpose districts. In an opinion dated September 9, 1981, concluding that the Saluda Recreation Commission and Hollywood Recreational Commission were special purpose districts, it was noted that those commissions had the power of eminent domain and were fairly autonomous and thus would be special purpose districts, even though the commissions lacked the power to levy taxes or issue bonds. By an opinion dated June 4, 1980, concluding that the Belvedere Water and Sewer District is a public service district, it was pointed out that the District was created by the legislature; its members were appointed by the Governor; its function was to provide water and sewer services within its boundaries; and the district was vested with the power to enter into contracts, make binding agreements, and generally take such actions in its name as would be necessary to accomplish its purposes. Finally, an opinion dated January 12, 1978, concluded that even though the Beaufort-Jasper Water Authority was not denominated a special purpose district but rather an 'authority,' the Authority would nevertheless be a special purpose district. In the opinion of September 9, 1981, reference is made to an order of the Honorable George F. Coleman discussing the characteristics of special purpose districts; a copy of that order is attached to this memorandum.

OTHER INDICIA

***6** Other indicia as to the scope of the term 'special purpose district includes other statutes and acts of the General Assembly. In the findings of Act No. 926, 1974 Acts and Joint Resolutions, which provided the mechanism for altering the boundaries of special purpose districts, the General Assembly stated in part:

The General Assembly finds that in order to provide special service of various sorts in (as a general rule) unincorporated areas of certain counties of the State, numerous special purpose districts were created. Many of the special purpose districts created have the function of providing water to those residing within the district or sewer service which provides for the collection, treatment and disposal of sewage or other effluents. In certain instances, special purpose districts provide fire protection and garbage disposal. Others have been created to provide hospital, recreation and educational services. . . .

By Section 2 of the Act, codified as Section 6–11–410(a), a special, purpose district is defined as 'any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local governmental function.' By Section 6–11–10 et seq. of the Code, a mechanism is provided to establish, by petition, districts for electric lighting, water supply, fire protection, and sewage treatment and collection. Section 4–9–80 of the Code, providing for abolition of such districts, recognizes that such district might be designated a public service district, special purpose district, water and sewer authority, political subdivision, or some other name, irrespective of the service being provided.

One final consideration is the remedial nature of Act No. 488. Where, as with Act No. 488, an act of the legislature is remedial, its terms should be broadly construed to effectuate its purpose. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). The findings of the General Assembly, supra, indicate that accountability of special purpose districts to the public whom such districts serve has been lacking. The Act would require a minimum level of cooperation and accountability to carry out the public trust, by requiring notification to the Secretary of State and the appropriate county auditor and also that an annual financial audit by a certified public accountant be provided to the county auditor. Failure of a special purpose district to produce the reports required by Act No. 488 could result in an investigation by the Secretary of State, a mandamus proceeding, or declaration by the Secretary of State that the special purpose district be inactive, resulting in the withholding of fees, taxes, or interest due the district by a county or municipality. Because such districts have heretofore been generally unaccountable, a broad interpretation of the term 'special purpose district' would remedy the situation and make special purpose districts accountable to the public from which they derive their revenues.

SUMMARY

***7** To summarize the foregoing, it would appear that the scope of the definition of the term 'special purpose district' is not clear. While the term should be interpreted liberally, such determination as applicability must be made on a case-by-case basis. Factors to be considered include the purpose of establishment, whether single or general; whether the entity has corporate

powers or duties; how the governing body is selected; whether the entity is empowered to issue revenue or general obligation bonds; whether the entity may levy tax assessments or issue notes or bonds; how the entity was created; and whether a county established the entity as a taxing district rather than a special purpose district. However, a lack of some of these factors would not prevent the Act from applying to a district. Legislative clarification would be beneficial, in the event that this Office is advocating a definition broader than that intended by the General Assembly. A declaratory judgment action, in some instances, may be helpful.

Attachment

Footnotes

1 While the title of Act No. 488 indicates that the Act is ostensibly applicable to public service districts or special purpose districts, the more sensible interpretation is to make the Act applicable to both, using 'or' in the conjunctive sense. See 82 C.J.S., Statutes, § 335; cf., Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736 (1963). Otherwise, the reference to public service districts in Section 6–11–1620(c) makes no sense, and the Act would not be remedial as to special purpose districts, thus defeating the clear legislative intent.

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