

1983 WL 182027 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 17, 1983

*1 The Honorable McKinley Washington, Jr.
Chairman
House Delegation
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina 29402

Dear Representative Washington:

You have informed us that a move is presently under way by the residents of Kiawah Island to create their own fire district. You note that Kiawah is currently being served by the St. Johns Fire District; this Fire District was created in 1959 by Act No. 369, long before the adoption of Home Rule. You inquire as to the following:

If a special fire district is created for Kiawah Island with an appropriate tax base imposed to support such a district, will Kiawah Island still be liable for property taxes that now, in part, support the St. Johns Fire District?

We would advise that if appropriate general law provisions are followed by County Council, the Council could by altering the boundaries of St. Johns Fire District, remove the tax responsibility of residents of Kiawah Island to support the St. Johns Fire District; and by following other statutory procedures, Council could create a new fire district for Kiawah Island.

[§ 6-11-410 et seq. of the Code of Laws of South Carolina](#) (1976 as amended) provides a mechanism for the alteration of special purpose districts, as defined, by the governing body of the county wherein the district is located. [§ 6-11-410](#) defines a special purpose district 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.

Moreover, [§ 6-11-420](#) authorizes the governing body of the county to 'enlarge, diminish, or consolidate any existing special purpose districts located within such county Thereafter, in [§ 6-11-430 et seq.](#), the procedures which must be followed by the governing body of the county are enumerated. They include the notice of and holding of a public hearing. [§ 6-11-440](#) and [§ 6-11-450](#). Any action taken toward alteration of the boundary of the special purpose district must be reflected in the records of the county treasurer and auditor, [§ 6-11-460](#), and provision is made in [§ 6-11-470](#) for publication of the governing body's action. Any final action taken toward alteration of the boundary of the special purpose district may be challenged in court by '[a]ny person affected' [§ 6-11-480](#).

In enacting [§ 6-11-410 et seq.](#), the General Assembly carefully defined its purpose in the preamble to the Act. [Act No. 926 of 1974]. The Legislature noted that a number of special purpose districts existed all over the state, each designed for a particular purpose, including fire protection. There existed a continuing need to either enlarge, consolidate or diminish these districts. The General Assembly specifically found, however that

By reason of the adoption of new Article VIII to the Constitution . . . questions exist as to the power of the General Assembly to enact laws for specific counties . . . [regarding special purpose districts]. In order to provide a means by which existing special purpose districts may be enlarged, diminished or consolidated, the General Assembly has determined to grant the governing bodies of the several counties of the State the power to enlarge or diminish the areas and consolidate the areas and functions of

any special purpose districts within such county. In enacting this act, the General Assembly is by general law exercising power specifically granted to it by Section 7 of new Article VIII of the Constitution.

*2 In Act No. 153 of 1981, when amending parts of [§ 6-11-410 et seq.](#), the General Assembly reiterated the general legislative purpose stated above.

Of course, the primary rule in construction of statutes is to give effect to the intention of the Legislature. [McGlohon v. Harlan, 254 S.C. 207, 174 S.E. 2d 753 \(1970\)](#). [§ 6-11-410 et seq.](#) is unambiguous in its language and its intent. Since, St. Johns Fire District was created by Act No. 369 of 1959 and is thus an 'existing' special purpose district within the meaning of [§ 6-11-410 et seq.](#), it would appear clear that Charleston County Council could lawfully alter the boundary of the District to exclude the Kiawah Island area, if the procedures contained in [§ 6-11-410](#) are followed.

Relating to the second step of the problem you have raised, there also exists a statutory mechanism for creation of special tax districts by County Council. [§ 4-9-30\(5\)](#). Specifically mentioned in this section is the authority of Council to create such a district for fire protection. We would note also, however, that [§ 4-9-30\(5\)](#) set forth various procedures which must be followed in creating such a tax district. However, if these provisions are followed, it would appear that County Council could lawfully create a new fire district for the Kiawah Island area.

In summary, we would advise that adequate statutory authority exists for Charleston County Council to remove the tax responsibility of the residents of Kiawah Island with respect to St. Johns Fire District and then shift that responsibility to a newly created fire district for Kiawah Island. Copies of these statutes are enclosed for your convenience and we would further advise that all the procedures contained therein must be followed to insure that such an alteration in tax liability is valid. These procedures are technical in nature, and we would advise that you seek the guidance of local counsel in attempting to comply with them.

If you have any further questions, do not hesitate to let us know.

With kindest personal regards, I am
Sincerely yours,

Robert D. Cook
Executive Assistant for Opinions

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