

1981 WL 158253 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 28, 1981

*1 The Honorable Richard W. Riley
Governor of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

You have requested an opinion on the constitutionality of H. 2570 (R-80). The Attorney General is out of the office today, and your letter was forwarded to me for reply.

It appears that this bill which purports to change the authority of the Macedonia Fire District to borrow funds in anticipation of taxes is unconstitutional. The District was created wholly within Cherokee County by Act of the General Assembly in 1970. The Board governing the District was given the power to determine up to a certain limit the tax millage to be levied by the auditor of Cherokee County. § 5, Id. It was also given the power to borrow in anticipation of taxes an amount not exceeding fifteen thousand dollars. § 4A(8), Id. This limitation was subsequently increased to fifty thousand dollars. Act No. 236, Acts and Joint Resolutions, South Carolina, 1975. The bill at issue here would increase the authority of the District to borrow up to one hundred thousand dollars in anticipation of taxes.

[Article VIII, § 7, of the South Carolina Constitution](#) prohibits the General Assembly from enacting special laws for a specific county. This article has been interpreted to prohibit special legislation dealing with special purpose districts created prior to the ratification of the Home Rule Amendment. [Cooper River Park and Playground Commission v. City of North Charleston](#), 273 S.C. 639, 259 S.E.2d 107, 109 (1979); [Torgerson v. Craven](#), 267 S.C. 558, 230 S.E.2d 228 (1976). Furthermore, it should be noted that fire protection is a function specifically granted to the counties by the Home Rule Act. [§ 4-9-30\(5\) South Carolina Code](#), 1976. Therefore this bill is, quite clearly, a special act prohibited by [Art VIII, § 7, of the Constitution](#).

It should be noted that the General Assembly has already enacted a general law which authorizes certain special purpose districts to borrow funds in anticipation of taxes. [§ 6-11-276, South Carolina Code](#), 1976 (as amended). Perhaps this general law could provide the means by which the borrowing authority of the Macedonia Fire District may be increased. In any event however, this special act would quite clearly be deemed unconstitutional.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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