

1980 WL 120678 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 19, 1980

*1 Mr. F. K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina

Dear Mr. Sullivan:

With regard to your inquiries concerning the Charleston County Park, Recreation and Tourist District and the Charleston County Board of Assessment Control, I can advise you as follows:

1. The Charleston County Park, Recreation and Tourist District (District), which was originally created in 1968 [55 STAT. 2542 (1968)], was re-created in 1972 [57 STAT. 3122 (1972)] and is, in my opinion, a special purpose district within the meaning of [Section 4-9-80, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Accordingly, the Charleston County Council is to exercise no additional authority over it by virtue of its 'home rule' powers and is limited to specific legislative powers granted it by statutes other than Act No. 283 of 1975, the 'home rule' legislation. Although there is legislation which authorizes a county council to approve increased tax millages for special purpose districts situated within that county in certain instances, that legislation applies only to special purpose districts which possess the statutory authority to levy taxes for maintenance and operation and, therefore, does not include the District. See, [§ 6-11-273, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Cum.Supp); see also, [§ 6-11-273, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Cum. Supp.). Nevertheless, the South Carolina Supreme Court recently held in a case involving a special purpose district located in Charleston County that special legislation with respect to a special purpose district solely within one county:

... is an attempt by the General Assembly to immerse itself directly in the regulation of a recreation district within Charleston County which is now a function reserved for local county government under Article VIII. Cooper River Park and Playground Commission, et al. v. The City of North Charleston, — S.C. — (Opinion No. 21031 filed August 16, 1979). Slip Op. at 17.

See also, [Torgerson v. Craver](#), 267 S.C. 558, 230 S.E.2d 228 (1976). It may be, then, that the Charleston County Council can approve the District's proposed tax millage free from any recommendatory action on the part of the Charleston County Legislative Delegation because such action would constitute 'an attempt by the General Assembly to immerse itself' in the regulation of the District. Nevertheless, before the Charleston County Council ignores a provision of pre-1973 special legislation, I would recommend that it seek a judicial declaration pursuant to [Sections 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, that it has the authority to do so.

2. The budget for the Charleston County Board of Assessment Control (Board), can most probably be established by the Charleston County Council because as of January 1, 1980, it is empowered to enact ordinances in conflict with special laws. 59 STAT. 690 at 716 (1975). Inasmuch as the Board is not the governing body of a special purpose district, there is no uncertainty as to the county council's authority similar to that which exists with respect to the Charleston County Park, Recreation and Tourist District. I might add, however, that the same question which I raised in my January 28, 1980, opinion to you may arise if the Charleston County Council seeks to alter the provisions of Act No. 999 of 1966, as amended. I understand from you, however, that a judicial resolution of that question will be sought and, perhaps, this question can be included in that action as well.

Best wishes,

***2** Karen LeCraft Henderson
Senior Assistant Attorney General

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