

1979 WL 42795 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1979

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Aiken, South Carolina 29801

Dear Mr. Williams:

You have requested an opinion from this Office as to whether or not a referendum to approve the creation of a tax district pursuant to [Section 4-9-30\(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, can be limited to the qualified electors of the proposed tax district who also own improvements therein. In my opinion, the referendum cannot be so limited as hereinafter discussed.

[Section 4-9-30\(5\) of the 1976 Code](#) provides in part as follows:

. . . provided, further, that prior to the levy of any tax to provide a service in a particular section of the unincorporated area of a county at rates different from those levied in other sections of the county related to the nature or level of governmental services to be provided therein, . . . , the qualified electors of that section of the county where such tax is proposed to be levied shall first approve by referendum . . . the creation of the separate tax district and the purposes for which special taxes may be levied therein; . . . [Emphasis added.]

Inasmuch as the statute authorizes all qualified electors in the proposed tax district to vote in the referendum, a county ordinance cannot conflict therewith by limiting the voters to those electors who own improvements. See, § 4-9-30, CODE OF LAWS OF SOUTH CAROLINA, 1976; 6 McQUILLIN MUNICIPAL CORPORATIONS § 21.32 (Rev. vol. 1969). This limitation would result in the unauthorized disenfranchisement of all those qualified electors in the proposed tax district who do not own improvements, e.g., tenants and members of households in whose name title to the real property is not held.

Furthermore, the tax levied in the proposed tax district must be levied on all real property therein and not limited to improvements thereon since the tax to be levied is specifically designated as an 'ad valorem property tax,' i.e., 'a tax or duty upon the value of the article or thing subject to taxation.' See, e.g., Arthur v. Johnston, 194 S.E. 151 (1937); see also, S.C. CONST. Art. VIII, § 7 and Art. X, § 6.

Finally, I would suggest as an alternative method by which the Aiken County Council can provide fire services to a less than county-wide area the provisions of [Section 4-19-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, which method does not require an approving referendum as a condition precedent.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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