

1980 WL 121259 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1980

\*1 Felix L. Finley, Jr., Esquire  
Pickens County Attorney  
Post Office Box 543  
Pickens, South Carolina 29671

Dear Mr. Finley:

In response to your request for an opinion from this Office concerning the proposed Dacusville Area Fire Protection District in Pickens County, I can advise you as follows:

1. The requirement of [Section 4-9-30\(5\)\(b\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, that a 'majority of the freeholders in the proposed special tax district must approve the creation of that district' is not expressly restricted to resident freeholders; moreover, the term 'freeholder' is defined in the amendment to [Section 4-9-30\(5\)](#) as follows:  
As used in subitems (a), (b) and (c) above, 'freeholder' means a person listed on the tax rolls of the county as owning real property within the proposed tax district . . . [§ 4-9-30\(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, (Cum.Supp.).

Because there is no specific statutory requirement that freeholders be residents in order to participate in the creation of a special tax district, my opinion is that they need not be residents and, instead, should be considered as freeholders who pay ordinary property taxes are considered, *i.e.*, if they are property owners, they are liable for property taxes whether they be resident freeholders or not. I would point out, however, that the Fourth Circuit Court of Appeals recently invalidated a statutory requirement in South Carolina that freeholders in addition to electors vote on annexation questions. [Hayward v. Clay, 573 F.2d 187 \(4th Cir., 1978\)](#). Although the constitutionality of the freeholder requirement of [Section 4-9-30\(5\)](#) has not been challenged to my knowledge, I would be hesitant to consider the freeholders' rather than the electors' votes as determinative of the referendum results.

2. My opinion is that a special tax district created pursuant to one of the three methods set forth in [Section 4-9-30\(5\)](#) cannot impose uniform service charges or user fees in lieu of ad valorem taxes to finance services provided. The statute speaks of the level of 'taxes' to be levied and, indeed, the district created is denominated a special 'tax' district. The authority to assess 'uniform service charges' provided for in [Section 4-9-30\(5\)](#) is a power separate and apart from the authority to 'tax different areas at different rates,' *i.e.*, the authority to create special tax districts, also provided for in [Section 4-9-30\(5\)](#). If, in addition to or coupled with a tax levy, however nominal, approved in a referendum,<sup>1</sup> the county council authorizes the imposition of a uniform service charge within the area of the special tax district, then, my opinion is that such imposition may very well be authorized. *Cf.*, [§§ 4-21-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976.

3. After discussing your third question with Deputy Attorney General Joe Allen, who specializes in tax matters, I think that any ad valorem property taxes levied in the proposed special tax district would have to be assessed and collected as any other county real property taxes are, *i.e.*, according to general law requirements. With respect to the assessment and collection of uniform service charges, however, my understanding is that they can be assessed and collected as the proper county officials may, in their discretion, provide for.

With kind regards,

\*2 Karen LeCraft Henderson

Senior Assistant Attorney General

Footnotes

- 1 Arguably, the 'maximum level of taxes authorized to be levied' to be voted on under [Section 4-9-30\(5\)\(b\)](#) could be zero millage.  
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