

1980 WL 121258 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1980

*1 Peter D. Hyman, Esquire
Hyman, Morgan, Brown, Jeffords & Rushton
170 Courthouse Square
Florence, South Carolina 29503

Dear Mr. Hyman:

You have requested an opinion whether the Florence County Council may, following a referendum, increase the tax levy in one particular subdistrict of Florence County Fire District (hereinafter 'the District'), when the District was created by special Act of the General Assembly and the tax levy set by that special act. It is the opinion of this Office that the Council may not increase the tax levy.

The Florence County Fire District is a special purpose district created within Florence County by Act No. 1817 of 1972 [1972 (57 Stat.) 3613]. There is no statutory provision whereby county councils may increase the tax levy of any special purpose districts. The Home Rule Act does not devolve any additional powers upon the county councils with regard to special purpose districts. § 4-9-80, [Code of Laws of South Carolina](#), 1976. Therefore, the county council does not have the statutory authority to increase the tax levy for any subdistrict of the Florence County Fire District.

It is not free from doubt as to how the tax levy may be changed. Any special act of the General Assembly to accomplish this purpose would almost certainly be unconstitutional. [Cooper River Park and Playground Commission v. City of North Charleston](#), 273 S.C. 639, 259 S.E.2d 107 (1979); [Torgerson v. Craver](#), 267 S.C. 558, 230 S.E.2d 228 (1976). Any statute which would provide for raising the tax levy in the Florence County Fire District must be general legislation which applies to all special purpose districts similarly situated. In this regard it should be noted that Article X of the South Carolina Constitution requires that all taxes in a particular special purpose district must be uniform throughout that district. [Celanese Corp. v. Strange](#), 272 S.C. 399, 252 S.E.2d 137 (1979). Therefore, the tax in one subdistrict could not be increased to eighteen mills if the tax in the remaining area of the district remained at five mills.

One suggested possibility for accomplishing the intended purpose might be to diminish the service area of the existing district so as to exclude the area within subdistrict no. 3. § 6-11-410 *et seq.*, [Code of Laws of South Carolina](#), 1976 (as amended). Then the county council could create a new tax district pursuant to the Home Rule Act in that old subdistrict no. 3 for the purpose of providing it a higher level of fire protection, and could tax that new district accordingly. § 4-9-30(5) *Id.* But whatever method is followed, the county council does not have the statutory authority to enact an ordinance to change the tax levy for the Florence County Fire District.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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