

1977 WL 37365 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1977

*1 Joseph H. Earle, Jr., Esquire
County Attorney
301 College Street
Greenville, South Carolina 29601

Deal Mr. Earle:

You have requested an opinion from this Office as to whether or not the Berea Public Service District can annex an area for the purpose of supplying it with fire protection only and levy a tax therefor which is less than the rate levied in the remaining portion of the district which receives both fire and sewer services. In connection therewith, I agree with the opinion of Deputy Attorney General Joe L. Allen, Jr., dated April 5, 1977, and directed to Assistant Greenville County Attorney Glen S. Baldwin, that any tax levied by the Berea Public Service District must be equal and uniform upon all taxable property within the District.

You have also requested an opinion concerning the Taylors Fire and Sewer District as to whether or not that District can assess different tax levies within the District depending upon the services provided. Again, for the reasons advanced by Mr. Allen in his April 5, 1977, opinion, I think that the District cannot constitutionally impose two different tax millages within its service area. This is so, notwithstanding the language of Act No. 1414 of 1970 which authorizes any special service district in Greenville County to add contiguous areas to its service area, to furnish the new area all or any portion of services furnished to the existing district and to charge therefor 'an amount commensurate to the services rendered.' 56 STAT. 3060 (1970). That legislation further provides as follows:

Once the new area is included in a particular district, the residents of the area shall be entitled to all of the benefits and services rendered to the residents of the district and shall be taxes as other property lying within the district. 56 STAT. 3060, § 2 (1970). [Emphasis added.]

As to the petition submitted by the Taylors Fire and Sewer District Commission to the Greenville County Council, I agree with your conclusions that subdivision (f) of paragraph III cannot be accomplished by the Council because such action involves an amendment to a statute and, thus, must be done by the General Assembly. As to subdivision (c) and (e), I think that the District cannot validly impose different tax millages within its service area depending upon the services rendered. In addition, Act No. 1414 of 1970 authorizes a Greenville County special purpose district to add to its service area contiguous areas only. As to subdivisions (a) and (b), the Council most probably can authorize those actions pursuant to its authority granted by Act No. 926 of 1974, although, like you, I think that there is only one special service district involved herein, i.e., the Taylors Fire and Sewer District. I cannot find any legislation which created two districts. 58 STAT. 2018 (1974). Finally, as to subdivision (d), I agree with your conclusion that such action would be unnecessary in view of the authority granted to the Commission in Section 3 of Act No. 1099 of 1958 [50 STAT. 2375 (1958)] and, moreover, such action is not of the type intended to be exercised by a county governing body by Act No. 926 of 1974.

*2 As a suggestion, the Council might consider diminishing the service area of the District to that area which receives fire and sewer services; then, as to the area which receives only fire service, the Council might want to re-create that area as a special tax district of the County pursuant to Section 14-3703(5), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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