ALAN WILSON
ATTORNEY GENERAL

December 30, 2015

Ms. Patricia Pringle, Esq.
Clarendon County Auditor
411 Sunset Drive
Manning, South Carolina 29102

Dear Ms. Pringle:

By Ordinance of the Clarendon County Council, effective April 24, 1980, the Clarendon County Fire Protection Service Area ("the CCFPSA") was created as a special tax district pursuant to S.C. Code Ann. § 4-9-30(5)(a) (Supp. 2014). See Clarendon County, S.C., Code of Ordinances, ch. 10, art. I-III (April 24, 1980). Being a special tax district, you have asked the opinion of this Office as to whether the CCFPSA would be subject to the millage rate cap imposed by S.C. Code Ann. § 6-1-320 (Supp. 2014). Our analysis follows.

Law / Analysis

As referenced in the Ordinance as authority for establishing the CCFPSA, Chapter 19 of Title 4 of the South Carolina Code specifically governs a county's ability to operate and maintain a system of fire protection. See S.C. Code Ann. § 4-19-10 et seq. (1986 & Supp. 2014); Clarendon County, S.C., Code of Ordinances, ch. 10, art. II, § 10-19 (April 24, 1980). Section 4-19-20(4) (Supp. 2014) specifically allows the governing body of a county to:

> by ordinance, . . . establish the fire protection district and, in order to provide for the operation and maintenance of it, authorize the levy of an annual ad valorem tax on all taxable property within the fire protection district, or the imposition of rates and charges for fire protection services within the fire protection district, or both. . . .

Also referenced in the Ordinance as authority for the creation of the CCFPSA, S.C. Code Ann. § 4-9-30(5)(a) (Supp. 2014) provides county governments with the ability to assess property and levy ad valorem property taxes and uniform service charges for many purposes, including fire protection services. Section 4-9-30(5)(a) further permits the creation of a special tax district, by one of the three procedures specified, for the purposes enumerated therein. See S.C. Code Ann. § 4-9-30(5)(a) (Supp. 2014) ("However, prior to the creation of a special tax district for the purposes enumerated in this item, one of the following procedures is required . . . .").

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In determining which procedure was followed in the creation of the CCFPSA, the Ordinance specifies that the CCFPSA is comprised of all of the unincorporated areas of Clarendon County:

> [the CCFPSA] shall include and be comprised of the territory in Clarendon County embraced within the following description:
>
> > All of the unincorporated area of Clarendon County, South Carolina, which constitutes the entire area of the County, including the area located within the incorporated municipalities of the Towns of Turbeville, Summerton and Paxville and excluding the area located within the incorporated municipality of the City of Manning.

Clarendon County, S.C., Code of Ordinances, ch. 10, art. II, § 10-20(a) (April 24, 1980, as amended). Thus, it appears the county acted pursuant to the authority to create a special tax district authorized under S.C. Code Ann. § 4-9-30(5)(a)(iii) (Supp. 2014). Such Section provides that:

> [w]hen the area of the proposed special tax district consists of the entire unincorporated area of the county, county council may pass an ordinance establishing a special tax district. For the purpose of this item, 'unincorporated area' means the area not included within the corporate boundaries of a municipal corporation created pursuant to Chapter 1 of Title 5 or within a special purpose district created before March 7, 1973, to which has been committed the governmental service which the county council intends to provide through the proposed special taxing district unless the special taxing district has been formant for five years or more. If, however, the same service intended to be rendered by the special taxing district is being rendered or is intended to be rendered within any portion of the territory of the special purpose district, then no such service may be rendered by the special taxing district without consent of the governing body of the special purpose district.

S.C. Code Ann. § 4-9-30(a)(5)(iii).

Subsections (b) through (h) of 4-9-30(5) place further directives and instruction on the creation of a special tax district. Such subsections state that

> (b) In the ordinance establishing the special tax district, county council shall provide for the operation of the special tax district. The special tax district may be operated as an administrative division of the county, or county council may appoint a commission consisting of three to five members and provide for their terms of office.
>
> (c) Notwithstanding any provision to the contrary, the county council shall not finance any service not being rendered by the county on March 7, 1973, by a countywide tax where the service is being provided by any municipality within

> that municipality or where the service has been budgeted or funds have been applied for as certified by the municipal governing body, except upon concurrence of the municipal governing body. For purposes of this subitem, "municipality" means a municipal corporation created pursuant to Chapter 1 of Title 5.
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> (d) Before the issuance of any general obligation bonds to provide a service in a special tax district and the levy of a tax to retire the bonds at rates different from those levied in the remainder of the county related to the nature and level of government services to be provided in the special tax district, the county council shall first approve the issuance of the general obligation bonds and the levy of the tax to retire the bonds by ordinance.
>
> (e) County council may by ordinance diminish boundaries of or abolish a special tax district. It must first conduct a public hearing. Notice of the hearing must be given two weeks before it in a newspaper of general circulation in the tax district.
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> (f) After a special tax district is created, pursuant to the provisions of this item, the governing body of the county may, by ordinance, provide that the uniform service charge be collected on an annual, semiannual, quarterly, or monthly basis. The governing body by ordinance also may provide for monthly delinquency penalty charges by special tax notices.
>
> (g) Any special taxing district created prior to the effective date of this act pursuant to this subsection, the creation of which would have been valid but for any inconsistency in or constitutional infirmity of this subsection as codified at the time of such creation, is hereby created and declared to be valid, and its existence is confirmed as of the date of its prior creation; provided, however, that any such special taxing district shall be subject to all provisions of this subsection as provided for in this act, including without limitation item (e).
>
> (h) The creation of a street lighting system within a county may not disrupt the assignment of electric service rights by the Public Service Commission. The special tax district may not treat the street lighting system as one premises for the purchase of electric energy. Those lighting structures located in an area assigned by the South Carolina Public Service Commission to an electric supplier pursuant to Section 58-27-640, et seq., must be served by the designated electric supplier unless it consents to service by another supplier. Those light structures located in an unassigned area must be considered a single premises and may be served by an electric supplier pursuant to the customer choice provisions of Section 58-27-620 or by an electrical utility pursuant to the certificate of public convenience and necessity provisions of Section 58-27-1230 to serve the lighting structures planned for the unassigned areas.

With the manner in which the CCFPSA was created in mind, we turn to analysis of S.C. Code Ann. § 6-1-320 (Supp. 2014), placing a limitation on the millage rate local governing

bodies may impose for general operating purposes on an annual basis. To determine whether these limitations are applicable to the CCFPSA, it is first necessary to review the applicable terms of the statute. In part, Section 6-1-320 provides that

> (A)(1) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.
>
> (2) There may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.

S.C. Code Ann. § 6-1-320 (Supp. 2014). Subsection (B) of this provision thereafter provides seven specific exceptions to this general rule that local governing bodies are prohibited from increasing their millage rates above those factoring in inflation and population growth. Furthermore, S.C. Code Ann. § 6-1-300(3) (2004), as used in Section 6-1-320, defines "local governing body" as including "the governing body of a county, municipality, or special purpose district." Accordingly, the Clarendon County Council, the governing body of Clarendon County able to authorize the levy for the CCFSPA, would appear to fall within the definition of a local governing body to which Section 6-1-320 applies. However, in 2011, the General Assembly amended S.C. Code Ann. § 6-1-320 to specifically exempt millage imposed for operating purposes by special tax districts from the Section 6-1-320 cap: "[t]he restriction contained in this section does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Section 4-9-30(5), but the special tax district is subject to the millage rate limitations in Section 4-9-30(5)." Act No. 57, 2011 S.C. Acts 258. Therefore, the Legislature has made clear that the millage cap imposed by Section 6-1-320 does not apply to special tax districts but are subject to millage rate limitations in Section 4-9-30(5).

As noted above, it appears the CCFPSA was created pursuant to the authority granted under S.C. Code Ann. § 4-9-5(a)(iii) (Supp. 2014). Unlike special tax districts formed as the result S.C. Code Ann. § 4-9-5(a)(i) and (ii), the plain language of the Section 4-9-30(5)(a)(iii) does not impose a millage rate limitation. Compare S.C. Code Ann. § 4-9-30(5)(a)(i) ("When fifteen percent of the electors in a proposed special tax district sign and present to the county council a petition requesting the creation of a special tax district, an election must be held in

which the majority of the electors in that area voting in the election shall approve the creation of the special tax district, the nature of the services to be rendered *and the maximum level of taxes or user service charges, or both, authorized to be levied and collected*") and S.C. Code Ann. § 4-9-30(5)(a)(ii) ("When a petition is submitted to the county council signed by seventy-five percent or more of the resident freeholders who own at least seventy-five percent of the assessed valuation of real property in the proposed special tax district, the county council upon certification of the petition may pass an ordinance establishing the special tax district. . . . The petition must contain. . . . *the maximum level of the taxes or user charges, or both, authorized to be levied and collected*") with S.C. Code Ann. § 4-9-30(5)(a)(iii) ("When the area of the proposed special tax district consists of the entire unincorporated area of the county, county council may pass an ordinance establishing a special tax district. . . If, however, the same service intended to be rendered by the special taxing district is being rendered or is intended to be rendered within any portion of the territory of the special purpose district, then no such service may be rendered by the special taxing district without consent of the governing body of the special purpose district") (emphasis added). Likewise, none of the other Subsections of Section 4-9-30(5) impose millage rate limitations. See S.C. Code Ann. § 4-9-30(5)(b)-(h) (Supp. 2014). Therefore, for a special tax district created pursuant to S.C. Code Ann. § 4-9-30(5)(a)(iii), it is our opinion that county council is authorized to set the annual millage of the special tax district in an amount determined by council to be necessary for operating purposes.

It is necessary to distinguish this conclusion from a prior opinion of this Office written in 2007. See Op. S.C. Att'y Gen., 2007 WL 1934802 (June 26, 2007). In our 2007 opinion we addressed whether an increase in the millage rate imposed for fire service areas set forth in the Spartanburg Annual Budget Ordinance was limited by the provisions of S.C. Code Ann. § 6-1-320. Id. Determining that the provision of fire protection services was a general operating purpose, we concluded that "any increase in the millage rate levied by a county for the purpose of providing fire protection services, whether or not provided pursuant to chapter 19 of title 4, is limited by section 6-1-320(A), unless the increase is due to one of the exemptions provided under Section 6-1-320(B)." Id. at *3. While our June 26, 2007 opinion appears to speak to the questions you have asked us to consider, we believe the change in the law effectuated by the 2011 amendment to Section 6-1-320, specifically exempting special tax districts from the millage cap imposed for operating purposes in Section 6-1-320, necessitates the conclusion reached above.

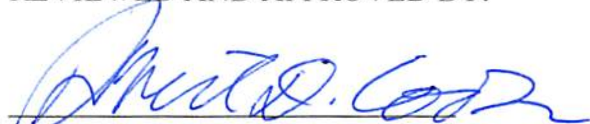
Conclusion

In 2011, our Legislature amended S.C. Code Ann. § 6-1-320 to specifically exempt from the millage cap, millage imposed for operating purposes by a special tax district while also clarifying that special tax districts are subject to the millage rate limitations in Section 4-9-30(5). The Clarendon County Fire Protection Service Area, made up of all of the unincorporated areas of the County, was created as a special tax district pursuant to S.C. Code Ann. § 4-9-30(a)(iii). Because Section 4-9-30(5)(a)(iii) and Sections 4-9-30(5)(b)-(h) do not impose millage rate limitations, it is our opinion that the Clarendon County Council is authorized to set the annual millage of the CCFPSA – again a special tax district created pursuant to S.C. Code Ann. § 4-9-30(5)(a)(iii) – in an amount determined by council to be necessary for operating purposes.

Very truly yours,

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General