1979 WL 42945 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 19, 1979

***1** E. P. Riley, Esquire
Attorney
Piedmont Sewer, Light
& Fire District
Box 10084
Greenville, South Carolina

Dear Mr. Riley:
Pursuant to our telephone conversation yesterday, I am writing concerning the probable effect of the South Carolina Supreme Court's opinion in Celanese Corporation, et al. vs. Strange, et al., 272 S.C. 399, 252 S.E.2d 137 (1979), upon certain portions of the Piedmont Sewer, Light and Fire District of Anderson and Creenville Counties (District).

As you know, in Celanese Corporation the Supreme Court invalidated a statute authorizing any special purpose district in Greenville County to take in areas contiguous thereto and to assess those added areas an amount commensurate with the services received, saying:
On its face Act No. 1414 authorizes the imposition of a non-uniform tax. This is violative of Article X Section 1 and Section 5. 252 S.E.2d at 139.

The District, which was created by Act No. 389 of 1955 [49 STAT. 776 (1955)], was increased in area in 1974 by Act No. 1419 of 1974. 58 STAT. 320 (1974). That Act validated the annexation of two industrial subdistricts within the District for fire protection purposes only and limited the tax to be imposed in those two subdistricts to 'the lesser of twenty mills, or one-half the tax rate imposed . . ., excluding any tax for paying or servicing bonded indebtedness, in the remaining territory of said District.' It further provided that '[n]o tax shall be levied . . . within the industrial subdistricts for the payment of any bonds issued by the . . . District.' These provisions, like the legislation struck down in Celanese Corporation, authorize the imposition of a non-uniform tax and, therefore, violate Sections 1 and 5 of former Article X of the South Carolina Constitution [now Section 6 of Article X].

Because the District is situated in more than one county, the provisions of Sections 6-11-410 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, which authorize any county governing body to consolidate, diminish, expand or otherwise alter the service area of special purpose districts located within a county, are most probably not available as a method to provide for the annexation of the industrial subdistricts of the District in a constitutional manner. My opinion is that the General Assembly is authorized to enact legislation relating to multi-county special purpose districts under the holding of Kleckley v. Pullium, 265 S.C. 177, 217 S.E.2d 217 (1975), and, accordingly, legislation providing for the annexation of the two industrial subdistricts within the District in a manner consistent with the uniformity of taxation requirement imposed by the State Constitution would be appropriate. Another alternative would be to amend the provisions of Sections 6-11-410 et seq. of the Code to allow county governing bodies to act jointly in altering service areas of special purpose districts which cross county lines. This last alternative may be the safest one insofar as the constitutionality of such legislation is concerned since the Supreme Court may very well hold, if and when the issue is presented to it, that the General Assembly cannot continue to legislate with regard to individual special purpose districts but, instead, must devolve that duty upon county governing bodies by general law, at least where multi-county special purpose districts do not perform a regional function like that performed by the Richland-Lexington Airport District in Kleckley.

***2** I am enclosing a copy of an April 18, 1979, opinion sent to Chief White of the Piedmont Park Fire District, which opinion reaches the same conclusion with respect to two industrial subdistricts located within that district.
With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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