1979 WL 42909 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 5, 1979

***1** Mr. Doug Cowart
Chairman
Piedmont Sewer, Light and Fire District
Piedmont, South Carolina

Dear Mr. Cowart:
The Piedmont Sewer, Light and Fire District (hereinafter 'District') recently requested an opinion from this Office concerning an increase in taxes within the District. That opinion concluded that a legislative amendment to the Act creating the District would be required, authorizing the District to set and/or increase the millage rate within the District.

In subsequent conversations with you, it became apparent that the fees being charged for fire service within the District might properly be classified as a special assessment as opposed to a tax, in which case such assessment would not be restricted by the uniformity requirement of Article X of the South Carolina Constitution (the article requiring uniform taxation within the territory of the political subdivision imposing the tax). See Celanese Corporation v. Strange, Opinion No. 20885, filed February 14, 1979.

The reason for such a classification stems from the District's limited taxing authority. The only taxing authority given the District is found in Act 449 of 1963, which authorizes a tax to pay for bonds and bond interest of the District. Currently, there are no bonds of the District outstanding, and it would seem that the District could not impose a 'tax' that it does not have the authority to impose.

A problem remains in classifying the fire service fee as an assessment. The District undoubtedly has the authority to establish and revise a schedule of rates and charges for the use of its sewage disposal system. However, Act 1839 of 1972, which authorizes the District to provide fire service in the District, failed to authorize the District to fix and revise a schedule of rates and charges for fire service. The District must, through legislative enactment, be given the authority to set and revise fees and rates for fire service. Given this authority, if the fees set by the District are assessments as opposed to taxes, such fees would not be subject to the uniformity requirement.

However, it must be noted that, in light of the recent Celanese case, supra, a copy of which is enclosed, the mere fact that a fee or charge is called an 'assessment' will not necessarily be controlling. The charge must produce some special benefit and not be used for the general operation of the District. The District might want to consider a declaratory judgment action to determine whether the fee it charges for fire service is an assessment or a tax.

If you have any questions, please contact me.
Sincerely,

James W. Johnson Jr.
Assistant Attorney General

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