

1977 WL 37428 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 19, 1977

*1 Albert Simons, Jr.
Sinkler Gibbs & Simons
Attorneys & Counsellors at Law
Post Office Box 340
Charleston, South Carolina 29402

Dear Mr. Simons:

With apologies for my delay in responding to your inquiries concerning the relation of Sections 4-19-10 et seq. and Sections 6-11-10 et seq. of the Code of Laws of South Carolina, 1976, to the provisions of Act No. 283 of 1975, the 'home rule' legislation, my opinion is that neither Sections 4-19-10 et seq. nor Sections 6-11-10 et seq. have been impliedly repealed by the provisions of the 'home rule' legislation.

I agree with your conclusion that, inasmuch as Section 4-9-30 provides that the powers granted therein are granted 'subject to the general law of the State,' the three methods therein set forth for establishing a special tax district are not exclusive. Moreover, the fact that both Sections 4-19-10 et seq. and Sections 6-11-10 et seq. have been carried forward in the 1976 Code indicates that those provisions are still very much part of the 'general statutory law of the State' [see, Act No. 95 of 1977, approved May 17, 1977].

The only question which remains in my mind is whether or not a special purpose district which is, in the future, created by means of Sections 6-11-10 et seq. of the Code would withstand a constitutional challenge under the provisions of new Article VIII as heretofore construed by the South Carolina Supreme Court. Any special purpose district created pursuant to Sections 6-11-10 et seq. would be an autonomous political subdivision and would not be a creature of county council as a special tax district created pursuant to the provisions of the 'home rule' legislation would be. The Supreme Court might very well determine that, inasmuch as the functions of a Section 6-11-10 special purpose district are 'county functions' [see, [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E. 2d 875 (1974); [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E. 2d 217 (1975)], they are to be performed by and under the supervision of the county. Of course, a judicial determination is the only way to resolve this doubt and, until and unless a court of competent jurisdiction declares those Code Sections to be unconstitutional, their constitutionality must be presumed by our Office since they have been enacted.

With kind personal regards,

Karen LeCraft Henderson
Assistant Attorney General

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