

1976 WL 30607 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1976

*1 Senator William W. Doar, Jr.
P. O. Drawer 418
Georgetown, South Carolina 29440

Dear Senator Doar:

Attorney General McLeod has forwarded your letter of January 7, 1976, relating to the Waccamaw Neck Flood District to me for reply. You have asked whether or not the District, which has about \$4,000 to \$5,000 to invest in an ambulance, is empowered to make such a purchase.

Section 2 of Act No. 159 of 1972, which creates the District, appears to limit the powers of the District to the promotion of health and safety through watershed programs and land use regulation, etc., and not through any other means. Thus the question becomes whether or not the 1972 Act could be amended or whether some other means could be found to use these funds for the purchase of an ambulance.

You suggest two alternatives: that either a special act be passed amending the 1972 Act, or the County Council adopt a resolution authorizing the spending of the money.

With respect to action by the County Council, the law currently in effect until the recent home rule legislation becomes effective clearly does not give counties authority over funds in the hands of public service districts; and while the new home rule legislation considerably broadens the powers of counties, the following portions of new § 14-3705 indicate that counties will have no new powers with respect to public service districts:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) . . .

With respect to special legislation amending the 1972 Act, § 14-3705 provides that:

. . . such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum . . .

The cases of [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1974) and [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E.2d 217 (1975) (dictum) both contain language which may indicate that Article VIII, Section 7 of the South Carolina Constitution bars any legislation providing for a special purpose district contained within a single county and performing functions which are now included within the general powers of counties. However, it is also possible that that language only applies to districts sought to be created after March 7, 1973 (when Article VIII, Section 7 became effective) and not to legislation affecting already-existing districts. This issue will ultimately have to be resolved by the courts. In the meantime, it is the opinion of this office that the last-quoted portion of § 14-3705 is not necessarily violative of Article VIII, Section 7, since § 14-3705 does not authorize the

creation of new districts. Thus a special Act either modifying the 1972 Act or turning the district's functions over to the county (after a referendum) would seem to be the best way to authorize the desired use of the funds.

Very truly yours,

*2 Kenneth P. Woodington
Assistant Attorney General

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