ALAN WILSON
ATTORNEY GENERAL

September 9, 2016

Mr. Patrick K. Zier, Esq.
Counsel, Langley Water Sewer and Fire District
P.O. Box 6516
North Augusta, South Carolina 29861

Dear Mr. Zier,

Attorney General Alan Wilson has referred your letter dated July 13, 2016 to the Opinions section regarding which statute controls in regards to the composition of the Langley Water Sewer and Fire District ("Langley Water") board of trustees of the Fireman's Insurance and Inspection Fund ("Board"). Your letter requests this Office's opinion as to whether a special purpose district, and more specifically Langley Water, is considered a city or town under S.C. Code Ann. § 23-9-320 or an unincorporated community under S.C. Code Ann. § 23-9-330.

Law/Analysis

After conducting research in regard to your opinion request, we have not found a South Carolina decision which addresses either S.C. Code Ann. § 23-9-320 or § 23-9-330. As a matter of first impression, we turn to the principles of statutory interpretation and endeavor to determine the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statutes' language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). However, the Supreme Court of South Carolina has stated that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.").

With these principles in mind we turn to the text of the statutes. Title 23, Chapter 9, Article 3 of the South Carolina Code of Laws governs the "Firemen's Insurance and Inspection Fund." S.C. Code Ann. §§ 23-9-310 through 470 (1976 Code, as amended). Section 23-9-310 requires the appointment of "a local board of trustees, to be known as the trustees of the firemen's insurance and inspection fund" for specified fire departments "deriving benefits from the provisions of this article." Article 3 establishes the composition of the Board in Sections 23-9-320 and 23-9-330 for "cities and towns" as wells as

"unincorporated communities" respectively. Section 23-9-320 provides the Board composition for cities and towns as follows:

> The board of trustees of the firemen's insurance and inspection fund in cities and towns, if composed of three, consists of the mayor, the councilman in charge of the fire department or the chairman of the fire committee, and the chief of the fire department. The board in cities and towns, if composed of five, consists of the chairman of the board of fire masters or the chairman of the fire committee, the chief of the fire department, the city or town treasurer, and two citizens, one to be appointed by the mayor and one to be appointed by the chief of the fire department, both to be confirmed by the governing body of the city or town. The term of office of the last two named members of the board is four years and until their successors are appointed and confirmed and qualify for office.

S.C. Code Ann. § 23-9-320.

Similarly, Section 23-9-330 provides the Board composition for unincorporated communities as follows:

> The board of trustees of the firemen's insurance and inspection fund in unincorporated communities is composed of the treasurer of the county in which the greater part of the community is located and any residents of the community as may be appointed by the treasurer, on a recommendation by a majority of the legislative delegation or delegations of the county or counties in which the community is located. The term of office of the members, other than the county treasurer, is four years, and they shall serve until their successors are appointed and qualify for office.

S.C. Code Ann. § 23-9-330.

These statutes are the only alternatives for Board composition listed within Article 3. Although it is not clear whether special purpose districts necessarily fall within either classification, as your letter states that Langley Water "qualifies and receives funding in accordance with the Fireman's Insurance and Inspection Fund," the mandate in Section 23-9-310 for fire departments which receive benefits under Article 3 strongly suggests that the General Assembly intended for special purpose districts to compose their Boards according to one of these two statutes. Therefore, this Office must decide whether, under Article 3, special purpose districts more properly considered cities and towns or unincorporated communities?

In order to give effect to the General Assembly's intent, we turn to case law, related statutes, and legislative history for further guidance. In Sloan v. Greenville Hosp. Sys., 388 S.C. 152, 694 S.E.2d 532 (2010), the Supreme Court of South Carolina described how special purpose districts developed prior to Home Rule and have continued after its enactment:

> Prior to the adoption of home rule in South Carolina, governmental power was concentrated at the state level in Columbia, and counties and municipalities had limited authority to provide services to its citizens. Therefore, the legislature created special purpose districts to fill the void for these needed services.... [T]his Court observed that in 1973, home rule (in which more authority was vested in local governments) put an end to

> the practice of creating special purpose districts within a given county, as special legislation relating to one county was no longer permitted; however, any existing units were allowed to continue functioning and county governments began providing services that were previously provided at the local level by special purpose districts.

Sloan, 388 S.C. at 162-63, 694 S.E.2d at 537-38. The statutory authority for establishing special purpose districts is contained in Title 6, Chapter 11 of the South Carolina Code of Laws which reads:

> In order to protect the public health, electric lighting districts, water supply districts, fire protection districts, and sewer districts may be established pursuant to this section for the purpose of supplying lights, water, providing fire protection with or without rescue response services related to the provision of fire services, a sewerage collection system, and a sewage treatment plant to a portion of any county in this State which is not included in an incorporated city or town.

S.C. Code Ann. § 6-11-10 (emphasis added). A practical, reasonable and fair interpretation of this statute when read in combination with Sections 23-9-320 and 23-9-330 strongly suggests that the General Assembly intended for special purpose districts to be considered unincorporated communities. By the express terms in Section 6-11-10, special purpose districts cannot currently be established for providing fire protection in incorporated cities or towns. While Section 6-11-10 was most recently amended by Act No. 178 of 2012, the portion of the statute containing this prohibition has been effective since 1934[1] and predates the most recent versions of both Sections 23-9-320 and 23-9-330 by over fifty years.[2] In fact, in the legislative findings of Act No. 926 of 1974 which allows for the alteration of special purpose district boundaries, the General Assembly stated in part, "The General Assembly finds that in order to provide special service of various sorts in (as a general rule) unincorporated areas of certain counties of the State, numerous special purpose districts were created... In certain instances, special purpose districts provide fire protection...." This legislative finding provides unambiguous evidence that the General Assembly did, in fact, regard special purpose districts to primarily service unincorporated areas of the State. Because the General Assembly is presumed to know of existing statutes and judicial interpretation when it enacts later legislation[3], it is this Office's opinion that the General Assembly intended "unincorporated

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[1] Act No. 734 of 1934, §1, eff May 2, 1934:

> In order to protect the public health; electric lighting districts, water supply districts, fire protection districts, and sewer districts may be established as hereinafter provided for the purpose of supplying lights, and/or water and/or providing fire protection and/or providing a sewerage collection system and/or sewerage treatment plant or plants to that portion of any county in this State which is not included in any incorporated village or city....

[2] 1987 Act No. 155, § 5, eff Jan. 01, 1988.

[3] See State v. King, 412 S.C. 403, 409–10, 772 S.E.2d 189, 192 (Ct. App. 2015), reh'g denied (June 5, 2015).

> The Legislature is presumed to know how the terms and phrases it uses in a statute have been interpreted in the past. *See State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 197–98 (1997) ("The General Assembly is presumed to be aware of the common law, ... and where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense." (citation omitted)); *see also Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 570, 743 S.E.2d 778, 783 (2013) (stating "this Court

communities," as used in Section in 23-9-330, to include special purpose districts for the purpose of Board composition.

This Office is aware of case law which has described special purpose districts as "quasi-municipal corporations"[4] and thus lends some support for interpreting special purpose districts as "cities or towns" under Section 23-9-320. However, in Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961), the Supreme Court of South Carolina clarified that special purpose districts are not considered municipal corporations under all state statutes and constitutional provisions. In that case the court stated:

> The term 'municipal corporation' ordinarily applies only to incorporated cities, towns and villages having subordinate and local powers of legislation.... However, at times the term is used in a broader sense to include every corporation formed for governmental purposes... [S]pecial districts... have been referred to in some of our cases as municipal corporations with limited functions and have been held to be municipal corporations within the meaning of certain sections of our Constitution.... But it does not follow that such special purpose districts are to be regarded as municipal corporations in the primary sense of the term so as to bring them within all of our statutes and constitutional provisions pertaining to incorporated towns and cities....

Tovey, 237 S.C. at 480–81, 117 S.E.2d at 874.[5] It is this Office's opinion that, under Tovey, a court would likely find special purpose districts are not "quasi-municipal corporations" for determining Board composition under the Fireman's Insurance and Inspection Fund. Rather, Langley Water would likely be considered an "unincorporated community" which should compose its board as directed by Section 23-9-330.

Conclusion

We hope that the guidance provided above will assist you and Langley Water in determining the proper composition of its board of trustees of the Firemen's Insurance and Inspection Fund. This Office

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> must presume the legislature knew of and contemplated [existing legislation] in enacting [an act]")...

[4] See Sanders v. Greater Greenville Sewer Dist., 211 S.C. 141, 155, 44 S.E.2d 185, 192 (1947) ("The Court there said that [a special purpose district] is 'a corporation or agency endowed with limited corporate functions, but they are derived from the same source and exercised in substantially the same way as any other municipal corporation. It is an arm of government created by the Legislature for a specific public purpose ..."); Boyce v. Lancaster Cty. Nat. Gas Auth., 266 S.C. 398, 401, 223 S.E.2d 769, 770 (1976) *overruled on other grounds by* McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) (finding the Authority to be "a body corporate and politic of perpetual succession" as well as a "quasi municipal corporation").

[5] See also St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) ("An SPD is neither a municipality nor a property owner for purposes of this provision."); 1 McQuillin Mun. Corp. § 2:33 (3d ed.) ("[W]hile deemed municipal corporations in a broad sense, [districts] are generally, but not uniformly, held, if a corporation of any kind, a quasi-municipal corporation. This is because they lack many of the powers commonly and necessarily characteristic of municipal corporations. The mere fact that a district is declared by statute to be a body corporate does not make it a municipal corporation....").

is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General