

2000 WL 356786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 2000

**RE: Informal Opinion**

\*1 The Honorable G. Ralph Davenport  
Member  
House of Representatives  
105 Ashland Terrace  
Boiling Springs, South Carolina 29316

Dear Representative Davenport:

Your opinion request has been forwarded to me for reply. You have asked two questions concerning special purpose districts.

#### **QUESTION 1**

Can a county government enter into an agreement for a fee in lieu of taxes and include a Special Purpose District in the agreement, without the knowledge of the Special Purpose District? (This is in reference to Title 4, Chapter 12, Code of Laws of South Carolina, 1976, as amended.)

Your question is based on S.C. Code Ann. § 4-12-10 et seq., which is entitled "Fee in Lieu of Property Taxes." Pursuant to Section 4-12-20:

Every agreement between a county, municipality, school district, water and sewer authority, or other political subdivision and another party in the form of a lease must contain a provision requiring the other party to make payments to the county, municipality, school district, water and sewer authority, and other political subdivisions in which the project is located in lieu of taxes, in the amounts that would result from taxes levied on the project by a county, municipality, school district, water and sewer authority, and other political subdivisions, if the project were owned by the other party, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the other party if it were owner of the project.

Section 4-12-30 provides that notwithstanding the provisions of 4-12-20, in the case of an agreement in the form of one or more lease agreements for a qualifying project, the county and the investor may enter into an inducement agreement which provides for a payment in lieu of taxes as provided in the section. This section, which is rather lengthy, also defines the types of projects qualifying under the section, the duties of the county and the investor in regards to the agreement, and the manner in which the fees may be assessed and distributed.

Having reviewed Section 4-12-10 et seq., there appears to be no requirement that a county must notify or seek approval from a special purpose district prior to the county entering into a fee in lieu of taxes agreement.

#### **QUESTION 2**

Can the tax levy of a Special Purpose District, which is voted in by public ballot, be changed, altered, or lowered by the State or the county government?

(Note: Some special districts - schools for example- set their tax levy by their budgets. The school board determines the budget needed to operate, submits this amount, and the county government levies the tax to be collected. In the case of a Special Purpose District, with a set millage, the board sets the budget to the set millage. The only time this type of district may grow is during a reassessment year. If the state of county government cuts this income, the district will never grow. When the people voted to set the millage at a set rate, nothing was said or voted to reduce this amount.)

\*2 The answer to this question is dependent largely on the particular facts of the situation. Numerous factors including, but not limited to, the district's enabling legislation, its taxing authority, and the actions of the county or state may have to be reviewed when making such a determination. This Office does not have the authority of a court or other fact-finding body and is not able, in a legal opinion, to adjudicate or investigate factual questions. Op. Atty. Gen. dated August 21, 1989.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain  
Very truly yours,

Paul M. Koch  
Assistant Attorney General

2000 WL 356786 (S.C.A.G.)