

1979 WL 43145 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 31, 1979

*1 Honorable John G. Felder
Member
House of Representatives
101 Herlong Avenue
St. Matthews, South Carolina 29135

Dear Representative Felder:

You have requested an opinion from this Office as to whether or not the Calhoun County Council can raise the tax millage levied for a special tax district without a referendum once the tax district is created. In my opinion, the Council cannot do so except as hereafter discussed.

[Section 4-9-30, paragraph \(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, provides three methods by which special tax districts may be created. Subparagraphs (a) and (b) of paragraph (5) set forth the first two methods of creating special tax districts, both of which require referendums approving the creation of the districts and 'the maximum level of the taxes authorized to be levied.' Inasmuch as the apparent intent of that language is to allow the electors to establish the rate of taxation, it would seem clear that the Council can not levy any taxes in excess of the maximum approved in the referendum creating the district without a subsequent referendum. If, however, the initial tax levied by the Council is actually less than the maximum amount authorized in the initial referendum, it would seem that the Council can raise the taxes up to the maximum amount without another referendum.

Subparagraph (c) of paragraph (5) provides the third method of creating a special tax district (by petition) and does not require an initial referendum establishing the district. The provisos which appear thereafter, however, make it clear that a referendum must be held:

provided, further, that prior to the levy of any tax to provide a service in a particular section of the unincorporated area of a county at rates different from those levied in other sections of the county related to the nature or level of governmental services to be provided therein . . . the qualified electors of that section of the county where such tax is proposed to be levied shall first approve by referendum the creation of the separate tax district and the purposes for which special taxes may be levied therein . . .

Inasmuch as the petition creating the district under subparagraph (c) must also contain 'the maximum amount of taxes authorized to be levied,' the electors, by approving the creation of the district, also approve the maximum amount of taxation. Therefore, it would seem that the same procedure discussed above for increasing taxes in special tax districts created by the methods enumerated in subparagraphs (a) and (b) would apply to those districts created by subparagraph (c).

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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