

1979 WL 43546 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 27, 1979

**\*1 Re: Opinion Request on Forest Beach Public Service District Soil Erosion Power**

Mr. William W. Jones, Jr., Esquire  
P.O. Drawer 1027  
Beaufort, S.C. 29902

Dear Mr. Jones:

You have requested an opinion of this Office on four questions concerning the authority of the Forest Beach Public Service District Commission to control beach erosion and to assess property within the district for that purpose. It is our opinion that the Commission has the necessary authority.

You have first asked whether the Commission has clear authority to act in the case of soil erosion. It is our opinion that it does. Section 4 of Act No. 481 of 1961 expressly authorizes 'to take such action as shall be required to prevent and control beach erosion within the district.' This Act clearly gives authority to the Commission to deal with beach erosion notwithstanding the prohibition in the South Carolina Constitution against special legislation. 'It is within the right of the General Assembly to create a special purpose district without regard to the prohibition of subdivision 9 of Section 34 of Article III.' [Distin v. Bolding](#), 240 S.C. 545, 126 S.E. 2d 649 (1962). It is, therefore, our opinion that the Commission has authority to act in the case of beach erosion.

Secondly, you have asked whether the Public Service District may use monies collected for other purposes and/or revenues produced from other sources for the correction of soil erosion problems. [Article X, § 5 of the S.C. Constitution](#) specifies, in pertinent part, 'Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.' Proceeds of a tax or assessment levied for a specific purpose cannot be diverted to the control of a different purpose. Op. Atty. Gen., dated Feb. 27, 1979. However, taxes collected for general corporate purposes may be used for such general purposes including beach erosion. Revenues from the operation of the waterworks system or other unrelated sources, accordingly, may not be used.

You have also asked whether the District Commission may assess all property owners within the district to provide funds to combat soil erosion, and whether the Commission may assess only those property owners directly affected by the soil erosion problem.

A project to control beach erosion could appropriately be classed as a local improvement if it confers a benefit on the affected property owners different from the general benefit enjoyed by those outside the district. [Wright v. Proffitt](#), 261 S.C. 68, 198 S.E. 2d 275 (1973). Such local benefit is a basis for a special assessment of the property affected, as distinguished from a tax on all property within a political subdivision for the general maintenance of government. [Celanese Corp. v. Strange](#), 272 S.C. 399, 252 S.E. 2d 137 (1979).

The power of the Commission to levy a tax or special assessment must be found in the special act creating the district, and not under the general law authorizing the creation of public service districts. [Edgcomb Steel Co. v. Gantt Fire, Sewer and Police District](#), 257 S.C. 21, 183 S.E. 2d 567 (1971). Act No. 481 of 1961, in Section 4, authorizes the Commission 'to raise funds for corporate purposes of the district by causing the levy of a tax therefor,' and also, 'to do all other acts and things necessary or convenient to carry out any function or power committed or granted to the district.' The use of the

word 'tax' is not determinative of the meaning of the Act. Celanese Corp. The creation of the district for the specific local purposes of providing waterworks and erosion control, in light of the above provisions, evidences an intent to enable the Commission to make local improvements and to levy special assessments as needed to finance them. The Commission appears to have authority both to tax and to assess.

\*2 Property tax levies must be uniform within the district where the tax is imposed. S.C. Const. (1895), Art. X, § 6, as amended. Special assessments, however, do not fall under the requirements of Article X. Celanese Corp. Assessments therefore can be made on the basis of benefits conferred on the property assessed, rather than ad valorem, in proportion to assessed value. The benefits need not be direct or immediate, if property value is enhanced by the effect on the district as a whole. Wright. Furthermore, a legislative determination that benefits will accrue to property within a specified district is conclusive, unless palpably arbitrary or wholly unwarranted. Id.

Section 1 of Act No. 481 of 1961 states: 'Recent storms have caused considerable erosion in certain sections of the district beach area, indicating that steps should be taken to guard against and prevent further erosion'. As a corporate purpose of the district, erosion control will benefit all the property owners within the district, and assessments are authorized accordingly. To the extent that the improvement is financed by taxes, the burden must be uniform throughout the district. Celanese.

It is our opinion that the Public Service District Commission may levy an assessment on all the property owners within the district pursuant to Act No. 481, or only on those to be directly benefited from the erosion control, as determined by the Commission in the proper exercise of its discretion.

Therefore, it is the opinion of this Office that:

- 1) the Commission has clear authority to act in the case of beach erosion in the district;
- 3) funds collected by the district for general corporate purposes may be used to correct beach erosion;
- 3) the Commission may levy a special assessment, or a tax, on all property owners within the district for the correction of beach erosion;
- 4) the Commission may levy a special assessment on those property owners who will benefit directly from the improvement.

I trust the preceding discussion adequately answers your questions; however, if any further explanation or assistance is required, please do not hesitate to contact me.

Very truly yours,

Richard P. Wilson  
Assistant Attorney General

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