

1978 S.C. Op. Atty. Gen. 109 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-78, 1978 WL 22559

Office of the Attorney General

State of South Carolina

Opinion No. 78-78

May 3, 1978

***1 SUBJECT: Property Taxation-Equality in Distribution and Authority of Special Service District to Subdivide.**

St. John's Fire District is without authority to subdivide its area so as to limit the benefits to a geographical area that is taxed. An agreement between the district and the property owners of a portion of the district's geographical area that the property taxes collected from such owners be expended exclusively for such owners' benefit is in conflict with the powers conferred the district and with Article X of the Constitution.

To: Mr. Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation

QUESTION:

May the St. John's Fire District enter into a contract with the Seabrook Island Property Owners Association to furnish fire services for an area comprised of the property of the members of the Association and further agree that all tax revenues from such property be expended solely for the benefit of the members' property?

APPLICABLE LAW:

[Article X, Sections 1 and 6 of the Constitution](#) and Act 369, Acts of 1959.

DISCUSSION:

It is assumed for purposes of this opinion that the property of the Association's members is a part of the geographical area of the fire district, otherwise [Section 6](#) of the 1959 Act would preclude the tax. The substantive question may be stated as whether the district can carve an area from the whole and render service and collect a tax for the service so rendered. It has long been settled that a political entity such as the district has only those powers conferred by the General Assembly. 'The powers of every municipal corporation or quasi judicial corporation are necessarily more or less limited, and the scope and extent of their corporate powers and their limitations are always matters of legislative discretion.' [Floyd v. Parker Water and Sewer Sub-District](#), 203 S.C. 276, 17 S.E.2d 223.

Here there is no authority for the district to divide itself into subdistricts and this is the substantive effect of the contract. While a county may do such under constitutional and statutory power, similar rights have not been delegated to special service districts.

In addition to the above the equal and uniform requirements of the Constitution, Article X, preclude the district from limiting the expenditure of the revenue to that part of the district that is directly benefited.

'Equality of the burden of taxation is, we agree, a fundamental requirement of the constitution. Art.X. And further we recognize the existence of the principle that the rule of equality and uniformity may be violated by a discriminatory

method of distribution of the proceeds of taxation. 51 Am.Jur. 219, 220, Taxation, sec. 165. [Commonwealth v. Alden Coal Co.](#), 251 Pa. 134, 96 A. 246, L.R.A. 1916F, 154.' [Parker v. Bates](#), 216 S. C. 52, 56 S. E. 2d 723.

'Thus, a statute which requires county taxes collected from the real estate located in a certain town in the county to be expended for public improvements in the town is violative of a constitutional requirement of uniformity in taxation, since it operates to exempt such real estate from taxation for other county purposes and throws a disproportionate burden upon other real estate in the county.' 71 Am. Jur. 2d, [State and Local Taxation](#), Sec. 170, citing [Prince George's County v. Laurel](#), 70 Md. 443, 17 A. 388. See also [Aetna F. Ins. Co. v. Jones](#), 78 S. C. 445, 59 S. E. 148.

*2 The provisions of the agreement have similar results and offend the equal and uniform requirements of the Constitution. The agreement further subordinates the powers of the district insofar as the budget is concerned to private entities, the Owners Association and Seabrook. The agreement requires the district to prepare a budget for the expenditure of the taxes collected on the members' property and the budget is 'subject to approval by Seabrook and the Owners Association'. As stated earlier, the district has those powers that are conferred by the General Assembly and we do not find any express or implied power for the district to subordinate its authority to a private entity.

CONCLUSION:

St. John's Fire District is without authority to subdivide its area so as to limit the benefits to a geographical area that is taxed. An agreement between the district and the property owners of a portion of the district's geographical area that the property taxes collected from such owners be expended exclusively for such owners' benefit is in conflict with the powers conferred the district and with Article X of the Constitution.

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