

1978 WL 35217 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 10, 1978

*1 Mr. Christopher Holmes
c/o The Honorable Gene W. Dukes
Post Office Box 622
100 Ridge Street
St. George, South Carolina 29477

Dear Mr. Holmes:

You have requested an opinion whether a county governing body may, with respect to a fire district created by a special act in apparent violation of the constitutional prohibition against special legislation, ratify that existing fire district without following or repeating the steps of a public hearing and referendum as set out in the South Carolina Constitution and Home Rule Act. It is our opinion that the surest statutory procedure for properly establishing the fire district is pursuant to [§ 4-9-30\(5\), SOUTH CAROLINA CODE OF LAWS, 1976](#).

As a condition precedent to the creation of a special tax district after June 25, 1975, the date of the Home Rule Act, the county council must follow one of three procedures set out in the Act. [§ 4-9-50\(5\), SOUTH CAROLINA CODE OF LAWS, 1976](#). In our opinion, the individual steps in any one procedure may be taken at any time. Therefore, if the referendum to which you referred fully satisfied the election or referendum requirement of any one of those alternatives, then that step would not need to be repeated now. However, any step not previously taken must be taken now in order to observe the statutory requirements for properly creating a special purpose district.

The statute which you cited, Act No. 1167, S.C. ACTS AND JOINT RES., 1974, did establish a procedure by which a county could create fire service districts by resolution after holding a public hearing. Although that Act remains in the [Code at § 4-9-10 et seq., SOUTH CAROLINA CODE OF LAWS, 1976](#), it is arguable that that provision has been superseded by the later enactment of the Home Rule Act which states that ‘. . . prior to the creation of any special purpose district for the purposes enumerated herein, one of the following procedures shall be required . . .’ (emphasis added) [§ 4-9-30\(5\), SOUTH CAROLINA CODE OF LAWS, 1976](#). The procedure set out in the earlier 1974 Act does not appear as a permissible procedure under the Home Rule Act. Since the Home Rule Act by its language excludes any other procedure and since it is a later expression of the legislature, arguably its provisions alone would be controlling. 2A SUTHERLAND'S STATUTORY CONSTRUCTION § 51.02. Nonetheless, there has been no determination that the 1974 Act has been superseded. It is merely an opinion that because of this problem, the surest procedure would be one set out in the Home Rule Act.

Furthermore, it is our opinion that it would be necessary for the county to obtain a declaratory judgment that Act No. 639 of 1973 (58 STAT. 1231 [1973]) is unconstitutional before it could assume the function of providing fire protection service in that area. Although the above described procedure appears to be complicated, there is no other statutory procedure which the county may follow.

Sincerely yours,

*2 David C. Eckstrom
Staff Attorney

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