1976 S.C. Op. Atty. Gen. 271 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4419, 1976 WL 23036

Office of the Attorney General

State of South Carolina
Opinion No. 4419
August 9, 1976

***1** If the North Charleston Public Service District issues $300,000.00 in bonds and if the District is then annexed by an incorporated municipality, the municipality incorporating the North Charleston District becomes liable for the District's debts.

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QUESTION PRESENTED:

If the North Charleston Public Service District is annexed by a municipality, 'which group of taxpayers will be responsible for paying the back debt?'

AUTHORITIES INVOLVED:

Walker v. Bennett, 125 SC 389 (1923);

Nesbitt v. Gettys, 219 SC 221 (1951);

City of Columbia v. Sanders, 231 SC 61 (1957);

2 McQuillin, The Law of Municipal Corporations, 3ed, Section 7.47 (1966);

103 ALR 141, annot.;

Moseley v. Welch, 209 SC 19 (1946);

Opinion No. 1061, March 14, 1961, Opinions of the Attorney General at 126.

DISCUSSION:

The Charleston County Council has proposed an ordinance, pursuant to Section 49–599.52 authorizing the North Charleston District to issue general obligation bonds or notes not exceeding $300,000.00. The proposed ordinance specifically irrevocably pledges 'the full faith, credit and taxing power of the District.' This District is not now located within any incorporated municipality. It is this Office's understanding that there has been talk of this District being annexed either to the City of North Charleston or to the City of Charleston. If this District is annexed by either of these incorporated areas, the District ceases to be a legal entity and the property of the District becomes the property of the annexing city, then it is the opinion of this Office that the incorporated area annexing the District becomes liable for the District's debts. See: 1961 Op. Att'y. Gen. at 126.

In annexation procedures pursuant to Sections 47–11, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended) allows the annexing parties to reach a contractual agreement as to the terms of consolidation of property and debts. See: Section 47–13, CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended). Therefore, under any annexation agreement, the parties may contract for the city to assume the property and debts of the district, or they may contract for the title to specific property to remain in the district.

It is the general rule in some states that
. . . a municipal corporation to which territory is annexed may be required, in an action brought for that purpose, to pay the debts of the annexed territory, which were in existence at the time of the annexation, or to assume a proportion of the indebtedness of the district from which the territory was taken, provided, of course, the annexation was legal. 2 McQuillin, The Law of Municipal Corporations, Section 7.47 at 534–535. See: 103 ALR 141 annot.

In the case of Walker v. Bennett, 125 SC 389 (1923), the South Carolina Supreme Court concluded that where several school districts were consolidated, the debts of each district became obligated under the entire consolidated district. See: City of Columbia v. Sanders, 231 SC 61 (1957); Nesbitt v. Gettys, 219 SC 221 (1951).
***2** In District of Columbia v. Cluss, 103 US 705; 26 L.Ed. 455, it was held that, where an Act uniting a school district into a municipal corporation was passed, the new corporation succeeded to the property of the former school district and also succeeded to its liabilities. Walker v. Bennett, 125 SC at 396 (1923). (Emphasis added).

It should be pointed out that in the Walker case, all property formerly of the individual school district was vested in the single consolidated district and the old districts ceased to exist as legal entities. Cf., Tindall v. Byars, 217 SC 1 (1950). The Supreme Court recognized these two facts in the case of Moseley v. Welch, 209 SC 19, 39 SE2d 133 (1946). In ruling that a statute adopting a county unit plan of education and providing that the outstanding bonded indebtedness of the several districts would be assumed by the single county board was violative of the equal protection and due process clauses of the Constitution, the Mosely court held:
. . . we construe this Act as leaving the corporate entity of the several school districts undisturbed. . . . The property continues to be that of the school district. . . .

'The Act now being assailed in no way purports to change the title to any of the tangible property of any school district, or to confer any interest therein upon any other school district, the title remaining just the same as before the passage of the Act and being wholly unaffected thereby. The effect of this is to permit a school district to acquire the absolute ownership of property and to require the citizens of other school districts to help pay for it without acquiring any legal interest whatever therein. . . .' (Emphasis added). Moseley v. Welch, 209 SC at 36–37.

CONCLUSION:

In light of the above cited authorities, it is the opinion of this Office that if the city agrees to assume the property and the debts of the district, the city is responsible for the debt. If the district is annexed without such an agreement and it maintains title to its property, then only the property holders within the district are liable for the debt.

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