

1975 WL 29292 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 24, 1975

\*1 Representative Tony J. Lister  
Room 321-B  
Spartanburg County Courthouse  
Spartanburg, South Carolina 29301

Dear Mr. Lister:

You have requested an opinion from this office as to the appropriate authority to increase the tax millage of the Boiling Springs Area Fire District created by Act No. 1189 of the 1958 General Assembly. See, 50 STAT. Act No. 1189 at 2696 (1958).

In the past, the General Assembly has authorized an increase in the millage of special purpose districts by the passage of special acts. See, e.g., 57 STAT. Act No. 1138 § 3, at 2308 (1972). Since the ratification of Article VIII of the South Carolina Constitution, however, these special acts have become constitutionally suspect. See, S.C. CONST. art. VIII, § 7; [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1974); [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E.2d 217 (Opinion No. 20075, filed August 5, 1975).

In order to resolve the uncertainty surrounding the type of question which you have raised, the General Assembly, in 1974, enacted Acts No. 926 and No. 1189. See, 58 STAT. Act No. 926 at 2018 (1974); 58 STAT. Act No. 1189 at 2787 (1974). Act No. 926 authorizes the governing body of a county to empower the commissions of special purpose districts situate therein to issue general obligation bonds to provide for the cost of any improvements. According to Section 10 of that Act, the county board:

may, but shall not be required to, condition the issuance of general obligation bonds upon the result of a special election held in the special purpose district . . .

The provisions of Act No. 926 apply to any special purpose district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local governmental function. Act No. 926, however, is limited by its own provisions to authorizing a county governing body to empower the commissions of special purpose districts to issue general obligation bonds only for the cost of improvements; moreover, the authority to issue general obligation bonds provided by Act No. 926 appears to apply only to special purpose districts whose boundaries and functions have been altered.

Act No. 1189 of 1974 is not so limited in its scope as Section 3 thereof reads:

[t]he county boards of all counties wherein special purpose districts exist shall be empowered to authorize the commission of such special purpose district to issue bonds whose proceeds shall be used in furtherance of any power of the special purpose district under the procedures herein prescribed.

The Act goes on in Sections 4 through 9 to authorize the county board, in its discretion, to order a public hearing to be held on the question of the issuance of bonds. Notice of the hearing is required (Section 5), proponents and opponents of the proposed action are to be given full opportunity to be heard (Section 6), after the hearing, the county board is to make a finding as to whether and to what extent the bonds should be issued and authorize the commission involved to issue the

bonds accordingly (Section 7), publication of the county board's action is required (Section 8) and any person affected by the county board's action may, within twenty days following the publication, challenge that action in the court of common pleas for that county (Section 9). As in Act No. 926, the county board may, but is not required to, condition the issuance of the bonds upon the results of a special election held in the special purpose district; if the election is ordered to be held, it is to be conducted according to the provisions of Sections 14-511, et seq. of the South Carolina Code.

\*2 Section 19 of Act No. 1189 provides in part:

[f]or the payment of the principal and interest of all bonds issued pursuant to this act, as they respectively mature, and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the special purpose district shall be irrevocably pledged, and there shall be levied annually . . . a tax without limit on all taxable property in the special purpose district sufficient to pay the principal and interest of such bonds . . . [Emphasis added.]

I am enclosing herewith, for your convenience, a copy of Acts No. 926 and No. 1189 of 1974 so that you may read them in their entirety.

As to Act No. 283 of 1975, the 'home rule' legislation, the provisions of that Act do not become effective until the new form of county government is selected and its powers as therein provided for are implemented. Even at that time, the provisions of Acts No. 926 and No. 1189 will not be changed by the 'home rule' legislation.

With kindest regards,

Karen LeGraft Henderson  
Assistant Attorney General

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