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Special Purpose Districts – Our Past, Our Present, and Our Future

Recent Developments To Guide Our Next Steps



What Will We Discuss?

1. The History of SPDs: What is Their Purpose and Why Are They So Special?
2. Home Rule and the Present State of SPDs: Making SPDs Even More Special
3. Recent Developments in the Law of SPDs: Identifying Risks and Providing Clarity and Strategies to Secure Our Future
 - Municipal Annexation – Threats and Protections For SPDs
 - Regionalization and Consolidation of Services – Purpose and Strategies
 - Elected Boards – Financing Capital Needs

Why Do We Have Special Purpose Districts?

- Prior to Home Rule, Counties Could Only Levy Taxes to Provide For Specific Purposes*
 - Education
 - Build and Repair Roads, Buildings, and Bridges
 - Maintain and Support Prisoners
 - Pay For Jurors, County Officers, Litigation, Quarantine and Court Expenses
 - Provide For Ordinary County Purposes
 - Support Paupers
 - Pay Past Indebtedness
- Counties Could Not Levy Taxes to Provide Certain Other Services:
 - Recreation (Leonard v. Talbert)
 - Sanitation (Doran v. Robertson)
 - Cultural Buildings (Powell v. Thomas)
 - Airports (Gentry v. Taylor)

*Article X, Section 6 of the South Carolina Constitution (1895).

Why Do We Have Special Purpose Districts?

- SPDs Were Created to Provide Services the Counties Could Not
- SPDs Could be Created in One of Two Ways
 - Act of the General Assembly
 - Petition and Referendum
- All SPDs are Different; Must Always Be Very Familiar With Their Enabling Legislation if Established by Special Legislation
 - Boundaries
 - Governing Board – Appointed or Elected?
 - Powers
 - Permissible Millage
 - Effect of Act 388
 - Effect of § 6-11-271
 - History of the Weaver Case

The Impact of Home Rule

New Article VIII of the South Carolina Constitution Created Home Rule and Increased the Powers of Counties

- **Section 1** – “The powers possessed by all counties . . . shall continue until changed in a manner provided by law.”
- **Section 7** – “The General Assembly shall provide by *general law* for the structure, organization, powers, duties, functions, and the responsibilities of counties No laws for a specific county shall be enacted”
- **Section 16** – “Any county . . . may, upon a majority vote . . . , acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric”

The Impact of Home Rule

By Largely Prohibiting the Creation of New Special Purpose Districts, Home Rule Made SPDs Truly Special

- The General Assembly May Not Create *New* Single County SPDs (Knight v. Salisbury)
- The General Assembly May Not Change the Powers of Existing SPDs by Special (Local) Legislation (City of Spartanburg v. SSSD)

The General Rule is That Any Legislation Affecting A Single SPD, Where the SPD is Situated in a Single County, is *Unconstitutional*

Challenges of Special Purpose Districts – Municipal Annexation Within SPD Boundaries

The Expansion of Municipal Boundaries Has Led to Their Encroachment on SPD Boundaries

Annexation Creates Service Overlaps and May Decrease the Size and Tax Base of SPDs

Annexation and Overlap Issues Have Been Addressed in Two Recent Opinions by the Office of the Attorney General of South Carolina

- S.C.A.G., March 30, 2012 – Provided an Overview of the Law Surrounding Annexation Within SPD Boundaries Where Services Overlap
- S.C.A.G., August 9, 2012 – Suggests That Legislative Action (Such as Annexation) That Impairs the Contractual Rights of Bond Holders May Violate the Contracts Clauses of the Federal and State Constitutions

Municipal Annexation

What Protections are Available to SPDs When Municipalities Annex Within Their Boundaries?

- Municipalities Have Absolute Power to Determine Whether to Provide Services in Annexed Areas But May Only Take Over Service Rights From SPDs Pursuant to a Plan (S.C. Code, § 5-3-310)
- Plan is Developed by a 3-Member Committee With Mandated SPD Involvement (S.C. Code, § 5-3-311)
- Plan Should Balance the Interests of Those SPD Areas Both Inside and Outside of the Annexed Area (S.C. Code, § 5-3-12)

Municipal Annexation

Who Provides Services and Collects Taxes/Fees While the Plan is Formed?

- The SPD Has the Right to Continue to Provide Services and Collect Revenues and Taxes Within the Annexed Area Until the Plan is Implemented (S.C. Code § 5-3-311(7))
- Both the Municipality and SPD Will Collect Taxes Within the Annexed Area While the Plan is Created and Implemented Despite Dual Taxation Concerns
 - Statute Grants the Municipality the Absolute Right to Annex *and* the SPD the Absolute Right to Continue to Tax/Collect Revenue While the Plan is Formed (S.C. Code § 5-3-311(7))
 - The South Carolina Constitution Requires That *Taxation* be Uniform Within Municipalities but not That *Services* be Uniform

Municipal Annexation

How Are the Holders of SPD Bonds Protected?

- A Plan to Transfer Service Rights May Not Disturb the Obligation Between an SPD and its Bond Holders (S.C. Code, § 5-3-314)
- Where Necessary to Ensure the Payment of Bonds, the County Auditor Must Levy Taxes on the Previously Constituted District Sufficient to Pay the Bonds (S.C. Code, § 5-3-314)
- The Office of the Attorney General Suggests Action May Be Necessary Where the New Boundaries of the Resulting District Would Diminish the Value of Outstanding Bonds (S.C.A.G., August 9, 2012)
- How Does This Change our Thoughts in Light of *St. Andrews Public Service District v. Moseley*?

Challenges of Special Purpose Districts – Increased Costs and Decreased Funding Opportunities

Challenges

- Costs Related to Compliance With Regulations Are Steadily Increasing
- Funding Opportunities From Grants and Low Interest Loans Are Becoming More Difficult to Come by

Three Potential Answers

- *Regionalization of Services*
- *Consolidation of SPDs*
- Change From *Appointed* to *Elected* Boards and Amend the Statute to Allow SPD Boards to Issue Bonds Without Seeking County Council Approval

Regionalization

What is Regionalization and Why is it Important?

- Regionalization Allows Multiple Providers of the Same or Associated Services to Partner to Provide the Services Throughout a Broader Area
- Increases Efficiency by Centralizing Functions That Are Common to All Providers Such as Administration and Regulatory Compliance
- Helps Provide For Decision Making Based on Broad Regional Needs
- Increases Capacity to Fund Large Infrastructure Projects and Provides Economies of Scale in Their Operation
- Increasingly, the Providers of Federal and State Grants and Loans Have a Strong Preference For Funding Regional Rather Than Local Projects

Regionalization

Creating a Joint Water and Sewer Authority (S.C. Code, Chapter 25 of Title 6)

- SPDs Are Authorized to Enter a Joint Authority to Provide for the Joint Administration of Any Function or the Exercise of Any Power (S.C. Constitution, Article VIII, § 13 and S.C. Code, § 4-9-41)
- Members Can be Any Combination of Municipalities, SPDs, and Counties
- Resulting Authority is an Autonomous Political Body Governed by a Board Composed of Members From Each Participating Entity
- Authority May Own and Operate Water/Sewer Treatment Plants, Collection Systems, Water Distribution Systems, etc.

Consolidation

Consolidating Two or More SPDs (S.C. Code, Article 3, Chapter 11 of Title 6)

- Authorizes Two or More SPDs to Consolidate Their Service Areas *and* Powers
- Consolidation May be Initiated by Petition of the Consolidating SPDs or Independently by County Council (S.C. Code, § 6-11-430)
- Petitioning SPDs Have Some Authority to Prescribe How Members of the New Commission Are Chosen, Except That if One SPD Has an Elected Commission Then the Consolidated SPD Commission Must Also be Elected (S.C. Code, § 6-11-610)
- The Consolidated SPD Has Any and All Powers Enjoyed by the Original SPDs (S.C. Code, § 6-11-620)

Empowering Elected SPD Boards

Changing From an Appointed to Elected Board (S.C. Code, Article 2, Chapter 11 of Title 6)

- Applies to Pre-Home Rule SPDs Within a Single-County (S.C. Code, § 6-11-350(A))
- Referendum may be Initiated by Petition Signed by 15% of Qualified Electors in the District and Must be Held on the Day of the General Election in an Even-Numbered Election Year (S.C. Code, § 6-11-350(B))

Empowering Elected SPD Boards to Issue Bonds: Amending S.C. Code, Article 5, Chapter 11 of Title 6

- Amend Sections of Article 5 That Require County Council Action for Elected SPD Boards to Issue Bonds



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Questions



Conclusions

Under Home Rule Individual SPDs Are Protected From Excessive Interference

SPDs Still Face Significant Challenges

- Decreased Area, Tax Base, and Customer Base From Municipal Annexation and Increased Cost of Providing Services
- More Competitive Environment For Funding Opportunities

SPDs Can Meet Those Challenges Through Forward Thinking and Cooperation

- Work With and Not in Competition With Nearby Municipalities
- Do Not Rule Out Consolidation as a Solution to Increased Funding Pressure
- Having an Elected Board and Pursuing Changes to the SPD Bond Issuance Statutes



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