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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMaster  
ATTORNEY GENERAL

April 19, 2005

The Honorable David C. Sojourner  
Mayor, Town of Saint George  
Post Office Box 904  
Saint George, South Carolina 29477

Dear Mayor Sojourner:

In a letter to this office you indicated that the Town of St. George is considering entering into a water purchase and supply agreement with the Lake Marion Regional Water Agency (hereinafter "the Agency"). You indicated that should St. George enter into the agreement, it would be obligated to purchase treated potable water from the Agency. The agreement is structured so that St. George can use sources of water other than that from the Agency only under the following circumstances: (1) to test St. George's backup water system; (2) on days when sufficient water from the Agency is not available; (3) on days when water from the Agency does not meet state or federal regulations. Otherwise, all potable water used by St. George will be purchased from the Agency. The term of the contract will be twenty (20) years.

You indicated that certain citizens have expressed concern that the Agreement amounts to an "exclusive franchise" of furnishing water to St. George consistent with S.C. Code Ann. §5-31-50 (2004). Such provision states:

All cities and towns of this State may grant to persons the exclusive franchise of furnishing water or waste disposal service to such cities and towns and the inhabitants thereof for a period not exceeding forty years. No such franchise shall be valid unless it shall first receive the vote of two thirds of the governing body of the city or town granting it and be subsequently confirmed by a vote of a majority of the qualified electors of such city or town, voting at an election to be called specially for the purpose. Any ordinance or resolution granting such a franchise shall prescribe a method for determining rates for furnishing water, both for public and private consumption, and for waste disposal service, and make provision for periodic renewal of such franchises. No such franchise shall exceed a period of forty years from the initial delivery of water or the commencement of waste disposal services or affect any existing contractual rights.

The Honorable David C. Sojourner  
Page 2  
April 19, 2005

Consistent with such provision, the question has been raised as to whether for the agreement with the Agency to be valid, must it receive a vote of two thirds of the governing body of the town which would subsequently be confirmed by a vote of a majority of the town electors at a called election.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

The term "exclusive franchise" as used in Section 5-31-50 is not defined by the statute. However, as set forth by Black's Law Dictionary, 4<sup>th</sup> Ed.,

A statute does not grant an "exclusive" privilege or franchise, unless it shuts out or excludes others from enjoying a similar privilege or franchise.

As set forth in Gordon's Construction and Landfill, Inc. v. Iberia Parish Government, 815 So.2d 991, 995 (La.2002), a franchise is

(i)n the strict and technical sense, a special privilege conferred by the government on an individual or individuals and which does not belong to the citizens of the country generally, of common right. In some cases the word "franchise" has been used as referring to the grant, and has been defined briefly as a grant from the sovereign power, and, in greater detail, as a grant by the state to some person, natural [or] corporate, or some privilege or power, not common to the people generally, with respect to property or rights subject to the control of the state or of some agency of the state.

Reference was made in the decision to the definition set forth by Webster's Third New International Dictionary, Unabridged, with defines "franchise" as

...a contract for public works or public services granted by a government to an individual or company....

The Honorable David C. Sojourner  
Page 3  
April 19, 2005

Ibid. Reference was also made to the Merriam Webster dictionary which defines “exclusive” as

...(1) (a) excluding or having power to exclude (b) limiting or limited to possession, control, or use by a single individual or group, (2) (a) excluding others from participation.

Ibid. The court in Gordon's Construction further stated that

In effect, the grantor of an exclusive franchise removes from itself the power and authority to grant similar rights to others or to permit others to engage in the same activity for which the exclusive franchise was awarded.

815 So.2d at 995-996. See also: South Carolina Electric and Gas Co. v. Town of Awendaw, 359 S.C. 29, 34, 596 S.E.2d 482, 485 (2004) (“A franchise constitutes a special privilege granted by the government to particular individuals or companies to be exploited for private profits.”).

Referencing the above, in my opinion, the agreement between St. George and the Agency by which St. George would be obligated to purchase treated potable water from the Agency except for the limited, specified circumstances set forth in the agreement should be considered an exclusive franchise. As a result, consistent with Section 5-31-50, the granting of the exclusive franchise should first receive the vote of two thirds of the governing body of St. George and be subsequently confirmed by a vote of a majority of the qualified electors of St. George voting at an election called especially for the purpose. Such conclusion is consistent with a prior opinion of this office dated September 24, 1979 where reference was made to the provisions of S.C. Code Ann. § 58-27-410 (1977) which provides:

All cities and towns of the State may grant the exclusive franchise of furnishing light to such cities and towns and the inhabitants thereof. But no such franchise shall be valid unless it shall first receive the vote of two thirds of the board of aldermen or common council of the city or town granting it and be subsequently confirmed by a vote of the majority of the qualified electors of the city or town, voting at an election called specially for the purpose....

The opinion noted that inasmuch as the referendum requirement set forth in the statute was not complied with, the utility at issue did not have an exclusive right to operate in the particular town. Inasmuch as an exclusive franchise would be granted by the proposed agreement between the Town of St. George and the Agency, the required approval by the town and the electors of the town must be obtained.

The Honorable David C. Sojourner  
Page 4  
April 19, 2005

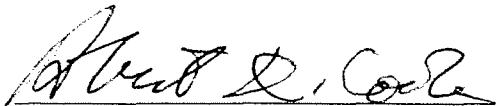
If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General