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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 24, 2005

John G. Felder, Esquire
Elloree Town Attorney
Post Office Box 346
St. Matthews, South Carolina 29135

Dear Mr. Felder:

In a letter to this office you requested an opinion on a matter concerning the authority of the Water Commission of Elloree in relation to the authority of the Mayor and Town Council. As set forth in your letter,

The Town of Elloree has a Mayor and Council form of government and it also has a Water Commission. This Commission is a creature of statute and its members are elected by the citizens of the Town. The Town is in the process of calling a referendum to abolish the Commission. In the meantime, a situation has arisen whereby Calhoun County wishes to contract with the Town of Elloree to extend waterlines and services from the Town located in Orangeburg County to citizens who live in Calhoun County. The question is whether the contracts should be between the Town of Elloree signed by the Mayor and its Clerk or by the Water Commission.

Also a question of a contract has come to light for expansion of water services with the Lake Marion Regional Water Authority and which entity should sign the contract. There is no dispute that nobody can pledge the full faith and credit of the Town or borrow money except the Mayor and Council through proper ordinances or resolution. Also, there would be no doubt until changed by vote of the citizens of the Town and an act confirming same by the General Assembly that the water system is operated by the Water Commission.

Referencing such you have asked who can contract for these expansions. You also asked whether the governing body of the Town of Elloree is the appropriate entity to sign these contracts and make the agreements on behalf of the Town. You commented that the Town owns the property that makes up the water system.

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In responding to your questions, I would note that this office has issued numerous opinions regarding commissioners of public works and a review of such opinions is helpful in responding to your questions. However, consistent with an opinion of this office regarding the commissioners of public works system dated May 23, 1973, "...the law in this area is far from settled and has been the subject of heated litigation. Thus, it is impossible to reach absolutely definitive answers to your questions."

A prior opinion of this office dated September 26, 2002 provided background information on the Ellore Water Systems Board of Commissioners ("the Board"). Such opinion states that:

The Town of Ellore's Board of Public Works was created by special election on October 29, 1924. Afterwards, the construction of a sewer system was authorized as an extension of the Waterworks System. Pursuant to then Section 59-364 of the Code of Laws of South Carolina 1962, by an Ordinance adopted by Council on June 15, 1964, the Waterworks System and the Sewer System were combined into a single system as the Water System of the Town of Ellore. The Commission operates pursuant to Title 5 Chapter 31 of the South Carolina Code of Laws as amended.

The opinion recognized that Chapter 31 of Title 5 of the Code is the chapter governing municipal electric, water, natural gas, and sewer systems in South Carolina. The opinion noted that in municipalities in which there are no boards of commissioners of public works, the powers and responsibilities of controlling the public works generally rests with the town council. See: S.C. Code Ann. § 5-31-230. Such provision lists the municipalities which do not have a board of commissioners of public works. Ellore is not included inasmuch as it does have such a board.¹

The opinion further states that a board of commissioners of public works derives its authority in part from Section 5-31-250, which reads:

The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

¹That opinion dealt with the question of whether the Town Council can prohibit the Water Commission Board from instituting new water and sewer rates. The opinion concluded that the Board "...has the sole responsibility for determining the rates to be charged for its services and need not obtain the Council's approval or concurrence before setting rates."

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That opinion also commented that this office has consistently indicated in prior opinions that the commissioners of public works have all powers necessarily incident to the operation and management of a water works system. See Ops. Atty. Gen. dated May 23, 1973, October 23, 1961 and August 19, 1959. An opinion dated February 10, 1959 determined that by the provisions of Section 5-31-250, commissioners of public works "...are vested with control and management of public utilities under their jurisdiction...This power is exclusive." See also: Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953); Town of Myrtle Beach v. Suber, 225 S.C. 201, 81 S.E.2d 352 (1954).

Similarly, an opinion of this office dated July 16, 1966 citing that same statute concluded that "...full control and management of a municipal system is in a Board of Commissioners of Public Works." As stated by an opinion of this office dated May 5, 1966, "...the Board of Commissioners is given the full control and management of the municipal waterworks system...(and)...a city council...has no authority or power in the management of a municipal waterworks."

Expansion of a municipal water system is provided for by statute. Pursuant to S.C. Code Ann. § 5-31-1510

(u)pon the written request of any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof the city or town may provide such service and levy an assessment against the property of the owner so requesting such service for the costs thereof.

Additionally, pursuant to S.C. Code Ann. § 5-31-1910,

Any city or town in this State owning a water or light plant may, through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.²

²Special exceptions to such statute are provided for municipalities of certain populations. See: S.C. Code Ann. §§ 5-31-1710, 5-31-1920 and 5-31-1930.

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A prior opinion of this office dated August 19, 1959 dealt with the question of whether a Board of Commissioners could take unilateral action to extend a water and sewer system beyond the corporate limits. That opinion concluded that

...the Board of Commissioners is an agency of the municipality and is the proper official for purposes within...(present Section 5-31-1910)...to enter into contracts for extension of the water system to contiguous areas beyond the corporate limits. The Town Council, however, is charged also with the responsibility of approving such an extension in accordance with the best interests of the municipality, and no such contract should be entered into except upon approval of the Town Council.

Consistent with such, in my opinion, any contract to extend water services would be between the individuals or entities seeking such extension and the Water Commission. However, as pointed out in the referenced opinion, the Ellore Town Council would have to approve of any such extension.

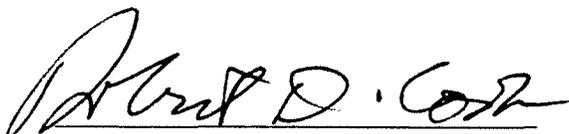
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General