

8055 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

November 29, 2005

The Honorable R. Thayer Rivers, Jr.  
Member, House of Representatives  
P. O. Box 104  
Ridgeland, South Carolina 29936

Dear Representative Rivers:

In a letter to this office you questioned whether Jasper County has two or four representatives on the board of the Beaufort-Jasper Water and Sewer Authority (hereinafter "the Authority"). The question has been raised in light of the provisions of Act No. 349 of 1975 which provides that the governing body of the Authority is to be comprised of eleven members, seven of whom are to be electors of Beaufort County and four of whom are to be electors of Jasper County.

As expressed in a letter from Mr. Steve Matthews with the law firm of Haynsworth Sinkler Boyd, P.A. which you forwarded with your letter, the question of the constitutionality of Act No. 349 is not free from doubt. Generally, while there is a strong presumption of constitutionality regarding any act of the General Assembly, Article VIII, § 7 of the State Constitution provides that "[n]o laws for a specific county shall be enacted." Our Supreme Court has applied this provision in a number of instances, striking down various enactments as violative of Art. VIII, § 7. Some of these decisions have involved a statute relating to a particular water and sewer authority. See, Pickens County v. Pickens Co. Water and Sewer Authority, 312 S.C. 218, 439 S.E.2d 840 (1994). In Hamm v. Cromer, 305 S.C. 305, 308, 408 S.E.2d 227 (1991), the Court had determined that the enactment of a local law for a special purpose district is the type of special legislation which is prohibited by Section 7 of Article VIII "...as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs." See also Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974).

However, in Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975) the Supreme Court recognized an exception for multi-county special purpose districts. In Kleckley, the Court addressed the issue of whether a 1975 act of the General Assembly authorizing the issuance of general obligation bonds by the Richland-Lexington Airport District, a special purpose district created in 1962, was constitutional under Article VIII, § 7. In the opinion of the Court, the Act was not related to a specific county and was thus valid because the two-county airport district was a matter of state-wide importance and the subject matter extended beyond purely local concern. 217 S.E.2d at

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221, 222. Relying on Kleckley, this office concluded that a 1979 act of the General Assembly related to the Western Carolina Regional Sewer Authority, a pre-1973 special purpose district serving Anderson, Greenville and Laurens Counties, was constitutional, given the regional nature of that authority. See, S.C. Op. Atty. Gen., February 5, 1985.

As determined in an opinion of this office dated March 29, 2005, while the Court in Kleckley "...appeared not to have based its decision solely upon the fact that the special purpose district in that case encompassed more than one county, dicta from the Court in a subsequent decision indicates that the multi-county nature of the district is pivotal." In interpreting the powers of the Fort Hill Natural Gas Authority, which was created by the General Assembly in 1952, the Court in Fort Hill Natural Gas Authority v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993), citing Kleckley, stated that "...we note that any amendment to this statute would not violate Article VIII, Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines of one county." 426 S.E.2d at 789. Based upon Kleckley and Fort Hill, this office concluded in an opinion dated July 31, 2003 concerning the Donalds-Due West Water Authority that

[i]f the defined service area [of the Donalds-Due West Water Authority] as provided in the Authority's enabling legislation, encompasses more than one county it is my opinion that the General Assembly most likely has the power to enact specific legislation related to the Authority.... If, on the other hand, the Authority's defined service area is confined to a single county, then it is my opinion that specific legislative action related to the Authority by the General Assembly would most likely be found by a reviewing court to be unconstitutional pursuant to the prohibitions of Article VIII, Section 7 and/or Article III, Section 34. [special legislation].

Consistent with such, it could be determined that, while not free from doubt, Act No. 349 of 1975 which provides that the governing body of the Authority, which is multi-county in nature, is to be comprised of eleven members, seven of whom are to be electors of Beaufort County and four of whom are to be electors of Jasper County could be upheld as constitutional.

However, as pointed out by Mr. Matthews in his opinion, the question of whether Act No. 349 is constitutional is probably irrelevant. As explained by Mr. Matthews, in 1983 the county councils of Beaufort and Jasper Counties pursuant to ordinances enacted jointly pursuant to S.C. Code Ann. §§ 6-11-410 et seq. consolidated the Beaufort-Jasper Water Authority and the Jasper County Water and Sewer Authority, altered the service areas of the Authority and specified that the governing body of the Authority would be composed of nine members. Those ordinances specified that seven of the members would be electors of Beaufort County and two would be electors of Jasper County. Consistent with the advice of Mr. Matthews, until such ordinances are modified by subsequent action of the county councils pursuant to Sections 6-11-410 et seq. or until there is further action by the General Assembly, those boards should be composed as specified by such ordinances.

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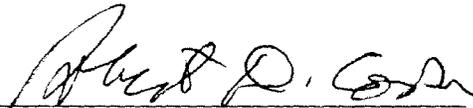
With kind regards, I am,

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General