



HENRY McMASTER  
ATTORNEY GENERAL

November 8, 2006

Lawrence E. Flynn, Jr., Esquire  
Lister, Flynn, Kelly & Talley, PA  
Post Office Box 2929  
Spartanburg, South Carolina 29304-2929

Dear Mr. Flynn:

By your letter, you informed us that you are the attorney for the City of Chesnee (the "City"). You also informed us that through your role as city attorney, you are active in negotiations between the City and the Spartanburg Sanitary Sewer District (the "District") for the District to acquire the City's sanitary sewer system. You stated:

The City constructed a wastewater collection system which consists of a treatment facility, approximately 180 manholes and 40,500 feet of pipe. This system is encumbered by two rural development loans which will probably be assumed by the District upon consummation of the transfer. The question which has arisen and which needs to be addressed relates to the authority of the City to transfer the system to the District. The City's position is that it has the authority "upon terms and conditions as Council deems advisable" to sell real or personal property without the requirement that a referendum be held. The District asserts that a referendum is required for such a transfer.

We would, therefore, request an opinion from your office as to whether or not a referendum will be required to allow the assumption of ownership of the City's sewer system by the District.

**Law/Analysis**

Section 5-31-610 of the South Carolina Code (2004) affords municipalities with various rights in regard to the construction and operation of municipal utilities. Among these is the right to "Contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all, for the use of such cities and towns, and the inhabitants thereof . . ." S.C. Code Ann. § 5-31-610(4). Furthermore, a municipality has the authority to "Sell, convey and dispose of any and all such properties, any such sale, conveyance or disposal of an electric light plant or water system, however,

*Request Letter*

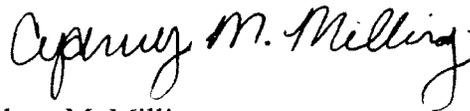
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to be made under the provisions of Article 13 of this chapter and not under the succeeding provisions of this article.” Id. § 5-31-610(5). Thus, these provisions allows municipalities not only to construct sewerage systems, but also gives such municipalities the authority to sell and dispose of such facilities. However, section 5-31-620 of the South Carolina Code (2004) requires:

Before such construction, purchase, sale, conveyance or disposal of any such property, or any part thereof, shall be made under the provisions of this article, the city or town council of the municipality shall submit the question of such construction, purchase, sale, conveyance or disposal of the qualified registered electors of the city or town at an election to be ordered for that purpose by the city or town council and to be conducted in accordance with the laws governing municipal elections.

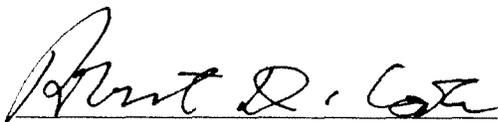
(emphasis added). Thus, according to this provision, before a municipality may sell a sewerage facility, it must submit the issue to its electors. Therefore, to answer your question, according to section 5-31-620, the City must hold a referendum prior to the sale of its sewerage facilities to the District.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General