



HENRY McMASTER
ATTORNEY GENERAL

September 5, 2006

The Honorable Ronnie Wood, Chairman
The Honorable Ken Gray, Member
The Honorable Larry Newman, Member
The Honorable Billy Proctor, Member
The Honorable Don Tipton, Member
Beech Island Rural Community Water District Board of Directors
480 Beech Island Avenue
Beech Island, South Carolina 29842

Dear Messrs. Wood, Gray, Newman, Proctor, and Tipton:

We received your letter requesting an opinion of this Office concerning the Beech Island Rural Community Water District's (the "District's") "authority to provide sewer to the public in [its] existing service area as well as our planned expansion projects"

Law/Analysis

Chapter 13 of title 6 of the South Carolina Code governs rural community water districts. S.C. Code Ann. §§ 6-13-10 et seq. We presume, based on your letter, the District was created pursuant to these provisions. As a creature of statute, the District has only such powers as are specifically granted to it by statute or which may be reasonably implied therefrom. Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995); Op. S.C. Atty. Gen., May 19, 2003. Furthermore, as we noted in a previous opinion, "the powers of a public service district are construed strictly." Op. S.C. Atty. Gen., June 27, 2002. Thus, we examine the provisions contained in chapter 13 of title 6 to determine if the District has authority to provide sewer service in its existing service area.

Section 6-13-10 of the South Carolina Code (2004) explains the creation and function of rural community water districts.

There may be created in the counties of this State water districts which shall be bodies corporate and politic of perpetual succession. It shall be the purpose and function of any district created under the provisions of this article to acquire, construct and operate a waterworks system, utilizing therefor water from available sources,

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by purchase or otherwise, at such convenient points as the district shall select, to provide a flow of water through pipes for domestic, commercial or industrial users who can be conveniently and economically served within or without the service area as may be created. To this end the district shall perform the functions prescribed by this article, and shall be vested with the powers herein granted and all other powers that may be necessary or incidental in carrying out the functions herein prescribed and exercising the powers herein granted. The water mains, distribution facilities, tanks, their several component parts, and all apparatus, equipment and property incident thereto or used or useful in the operation thereof and all additions, improvements, extensions and enlargements to any of them shall be referred to in this article as the system.

S.C. Code Ann. § 6-13-10 (emphasis added). Thus, this provision only provides a district created pursuant to this legislation with the authority to create or acquire a waterworks system. This provision does not make any reference to a district's authority to also provide sewer services.

Section 6-13-50 of the South Carolina Code (2004) describes a district's powers. This provision contains an extensive list of powers afforded to rural community water districts. Once again, this provision does not indicate a district has the power to operate sewer services. Keeping in mind that the powers afforded to special purpose districts shall be strictly construed, in our examination of the statutes, we found no evidence of the Legislature's intent to afford rural community water districts with the power to provide sewer services.

In your letter, in addition to referencing section 6-13-10 as cited above, you also pointed us to section 6-11-320 of the South Carolina Code for our consideration regarding your request. Section 6-11-320 of the South Carolina Code (2004) allows special purpose districts empowered to provide water services as of a particular date to also provide sewage collection and disposal services.

(A) A special purpose district, which was empowered as of March 7, 1973, to provide water service to the area within its boundaries, may provide sewer service to the area within its boundaries if it has received permission, by written resolution, from the governing body of the county in which the district is located, provided that the sewer service may not be provided to those parts of that area where sewer service, at that time, is being provided by a governmental entity at the time the district's governing body determines to utilize the provisions of this section. The district may build, acquire, construct, operate, and maintain sewage collection, treatment, and disposal facilities or contract for the use of any facilities as are, in the opinion of the governing body of the special purpose district, necessary for the district. The district may impose such schedule of rates and charges

for the use of sewage collection, treatment, and disposal facilities as the governing body of the district shall from time to time approve. The governing body may place into effect and revise, whenever it wishes or is required, a schedule of rates for the sewer service made available by it to persons, firms, and corporations within the district.

(B) All other powers of a special purpose district shall continue and are not considered to be changed by the provisions of this section.

According to the plain language in this provision, if a special purpose district provided water service prior to March 7, 1973, it may also provide sewer service to the area within its boundaries.

Section 6-11-320 is contained in the provisions of the South Carolina Code generally governing special purpose or public service districts. These provisions include statutory authority to create a special purpose or a public service district separate from those contained in chapter 13 governing rural community water districts. Thus, we must determine whether the provisions generally relating to special purpose districts contained in chapter 13 also apply to rural community water districts created pursuant to chapter 11.

Both the provisions in chapter 11 and in chapter 13 provide for a method by which a district may be created, a body to oversee the district, and powers and duties held by a district. In our review of the legislative history chapters 11 and 13, we discovered the Legislature enacted the provisions contained in chapter 11 prior to those contained chapter 13. Our courts, as well as this Office, recognize the rule of statutory construction presuming "that the legislature has knowledge of previous legislation . . . when later statutes are enacted concerning related subjects." State v. McKnight, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003). Thus, we presume the Legislature had knowledge of those provisions contained in chapter 11 generally governing special purpose districts when it chose to enact separate provisions for rural community water districts. In addition, our courts also recognize "specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993). Chapter 13, in addition to its enactment subsequent to chapter 11, specifically deals with rural community water districts, whereas chapter 11 deals generally with special purpose districts. From its enactment of chapter 13, we believe the Legislature intended to create separate statutory framework to govern rural community water districts.

Our belief is further enhanced by the fact that the Legislature expressly made one article of chapter 11 applicable to rural community water districts. Article 11 of chapter 11 sets forth provisions mandating special purpose districts to notify the South Carolina Secretary of State upon their creation. S.C. Code Ann. §§ 6-11-1610-1650 (2004). Section 6-11-1610 contained in these provisions states:

For the purposes of this article, "special purpose district" means any district created by an act of the General Assembly or pursuant to

general law and which provides any local governmental power or function including, but not limited to, fire protection, sewerage treatment, water or natural gas distribution, recreation, and means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6. Special purpose districts do not include any state agency, department, commission, or school district.

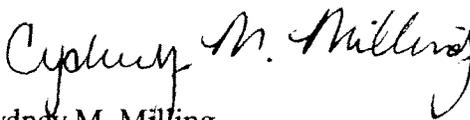
(emphasis added). This provision indicates the Legislature's intent to make the provisions under article 11 of chapter 11 applicable to rural community water districts. Article 1 of chapter 11, which contains section 6-11-320, and the other articles included in chapter 11 do not contain provisions indicating the Legislature intended them to apply to rural community water districts. Therefore, we gather that the other articles contained in chapter 11 do not apply to rural community water districts.

Presuming the District was created under the provisions of chapter 13, rather than chapter 11, we do not believe a court would find the provisions of chapter 11 generally applicable to the District with the exception of those contained in article 11 of chapter 11. Thus, section 6-11-320, allowing special purpose districts empowered to provide water services established prior to March 7, 1973 to also provide sewer service, would not be applicable to the District.

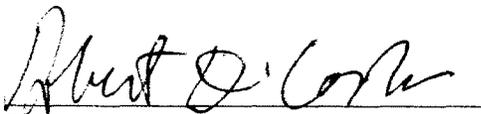
Conclusion

Based on our review of the statutory provisions governing rural community water districts, we do not find the Legislature afforded these types of political subdivisions with express or implied authority to provide sewer services. In addition, we do not believe a court would find section 6-11-320 applicable to rural community water districts. Therefore, it is our opinion that the District is without authority to add sewer service to its existing service area. If the District desires to provide sewer service to its existing service area, we suggest the District seek action from the Legislature in the form of an amendment to chapter 13 of title 6 allowing rural community water districts to provide such services.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General