

May 8, 2008

The Honorable John M. Knotts, Jr.
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Knotts:

We received your letter requesting an opinion of this Office on the authority of the Berkeley, Charleston, and Dorchester Council of Governments (the “COG”). Attached to your letter, you provided us with a letter from Timothy S. Mallard, a member of the Charleston City Council. In this letter, Mr. Mallard explained that the COG’s executive committee passed a motion stating “only public entities can operate water and sewer systems.” In addition, he states that the full COG ultimately passed the same motion. Thus, Mr. Mallard inquires as to “whether the COG can say, ‘We are against privatization and we are going to outlaw them.’” Furthermore, he asks “does the COG have the authority to deny permits for privately owned sewer systems.”

Law/Analysis

Article VII, section 15 of the South Carolina Constitution (1976) authorizes the Legislature to create regional councils of governments. According to this provision, such organizations exist to “to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate.” S.C. Const. Art. VII § 15. Furthermore, article VIII, section 13(A) of the South Carolina Constitution (Supp. 2007) states: “Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.”

Pursuant to these constitutional provisions, the Legislature authorized the creation of regional councils of governments as provided in sections 6-7-110 et seq. of the South Carolina Code (2004). Section 6-7-140 of the South Carolina Code provides the powers and duties of regional councils. These powers include the power to:

- (1) Prepare studies and make recommendations on such matters as it deems appropriate;
- (2) Coordinate and promote cooperative programs and action with and among its members and other governmental and nongovernmental entities, including those of other states;
- (3) Study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate;
- (4) Provide continuing technical assistance, and information to the member local governments and other agencies and individuals;
- (5) In general, the regional council of government shall have the power to carry on such planning activities and the development of such studies and programs as it deems to be in the interest of the area;
- (6) Acquire and dispose of real and personal property necessary to the conduct of its business;
- (7) After coordination with the appropriate State, local and Federal agencies, the regional council of government may adopt such plans and programs as it may from time to time prepare. Such plans and programs as are adopted shall constitute the recommendations of the regional council of government.

S.C. Code Ann. § 6-7-140.

We stated in a 1996 opinion of this Office: “As to powers and responsibilities of regional councils of government, this Office has advised previously that no council of government has been granted powers of a general purpose local government such as those found in § 5-7-30 as to incorporated municipalities or §4-9-30 as to counties.” Op. S.C. Atty. Gen., May 2, 1996. Furthermore, based on our review of the pertinent constitutional and statutory provisions, we did not find that a regional council of government has the authority to determine who may provide water and sewer service in the area represented by the council. Rather, it appears that a council of governments’ authority is limited to studying issues pertaining to local governments and to working with local governments on plans to resolve such issues by making recommendations. Although the COG has the ability to make recommendations to the governments it serves concerning water and

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sewer service, we do not believe the COG has authority to determine who may provide water and sewer service in the area served by the COG. Moreover, we find no authority indicating that the COG has authority to issue or deny permits for sewer systems.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General