



ALAN WILSON
ATTORNEY GENERAL

December 12, 2011

Thomas M. Boulware, Esquire
Brown, Jeffries & Boulware
19 Jefferson Street
Barnwell, South Carolina 29812

Dear Mr. Boulware:

You have requested an opinion of this Office in follow-up to our opinion dated September 27, 2011, concerning the ability of the City of Barnwell to extend its sewer system—but not its water system—to a location beyond its municipal boundaries. Your follow-up question concerns the application of section 5-31-890 of the South Carolina Code (2004) to a municipality that does not have a board of commissioners of public works, a sewerage commission, or other like body. You indicate that the City of Barnwell has no such entity, and therefore, you inquire whether the City may “act directly” to enter a contract of the kind contemplated by section 5-31-890.

Section 5-31-890 provides:

All municipalities in this State owning, controlling, leasing or planning to construct a system of sewage disposal with or without outfalls, rights of way, easements and appurtenances thereto, may, through proper officials, commissioners of public works, sewer commissions or any of them or like bodies, enter into contracts and agreements with persons or political subdivisions outside the corporate limits of such municipalities, whether contiguous thereto or not, for the construction, maintenance, operation, improvement, leasing, controlling or furnishing the use, benefits and facilities thereof upon such terms and at such rates and charges as may be fixed by the contract or agreement between the parties when, in the judgment of the proper officials, commissioners of public works, sewer commissions, or any of them or like bodies, as the case may be, it is for the best interest of the city, town or municipality so to do. But no such contract or agreement shall be for a period exceeding thirty years from the effective date thereof.

Nothing herein contained shall be construed as abrogating, limiting or qualifying any contracts or agreements of the nature set forth herein which may have heretofore been entered into and under which the parties thereto are operating.

(Emphasis added).

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Section 5-31-230 of the South Carolina Code (2004 & Supp. 2010) provides that in the City of Barnwell—as well as in a number of other cities and towns— “there shall be no board of commissioners of public works but in these cities and towns the duties, powers and responsibilities vested in such boards in other cities and towns shall be vested in the respective city or town councils”¹

Taken together, these provisions indicate that city council would be a proper body to enter a contract of the kind described in section 5-31-890.

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

CC: Karen Blair Manning, Esquire
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

¹ The statute goes on to list certain exceptions not applicable to the City of Barnwell.