



ALAN WILSON
ATTORNEY GENERAL

April 30, 2012

Andy Fiffick, Esquire
c/o The Honorable Bill Sandifer
Representative
407 Blatt Building
Columbia, South Carolina 29211

Dear Mr. Fiffick:

You have requested an opinion of this Office “as to whether Article 3 of Chapter 13, Title 6 confers upon the Pioneer Rural Water District of Oconee and Anderson Counties the power to contract for or undertake the construction of new freshwater treatment facilities.”

Analysis

The Pioneer Rural Water District of Oconee and Anderson Counties (“the District”) was created in 1965 for the following purposes:

[T]o acquire, construct and operate a waterworks system, utilizing therefor water from available sources, by purchase or otherwise, at such convenient points as the district shall select to provide a flow of water through pipes to the areas described in [§ 6-13-220], and to such other domestic, commercial or industrial users who can be conveniently and economically served within or without the service area as herein provided.

Act No. 371, 1965 S.C. Acts 667 (codified at S.C. Code Ann. § 6-13-210 (2004)) (emphasis added). The Act went on to define the waterworks system to be acquired by the District as follows:

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.

Id. (emphasis added). Clearly, the primary purpose of the District was to distribute water to the District’s service area, not to treat a supply of water for distribution. *Compare id. with* S.C. Code Ann. § 6-37-30 (Supp. 2011) (creating the Beaufort-Jasper Water and Sewer Authority to “acquire supplies of water and to distribute such water within its service area” and specifically empowering it to “construct such . . .

treatment facilities, impounding dams or d[i]kes . . . water distribution facilities, water mains and water lines, and appurtenant facilities, as in the opinion of the authority . . . may be considered necessary”). In accord with this overall purpose, section 6-13-240 of the South Carolina Code (2004 & Supp. 2011) provides a non-exhaustive list of the District’s powers, as follows:

The district, acting through its governing body, is hereby vested with all such powers as may be necessary or incidental to carry out its purposes, functions and responsibilities including, but without limitation, the following:

. . . .

(7) To build, construct, maintain and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, dikes, dams, and reservoirs.

(8) To build, construct, maintain and operate distribution systems for the distribution of water for domestic or industrial use.

(9) To acquire and operate any type of machinery, appliances or appurtenances, necessary or useful in constructing, operating and maintaining the system.

(10) To contract for or otherwise acquire a supply of water and sell water for industrial or domestic use.

. . . .

(12) To enter into contracts of long duration for the purchase and sale of water with persons, private corporations, municipal corporations, or public bodies or agencies.

. . . .

(19) To exercise the power of eminent domain for any corporate function. . . . *Provided*, that the power of eminent domain conferred hereunder shall not extend to the property of any public utility that the utility could have acquired under its powers of eminent domain.

(Emphasis added). This list makes it apparent that if the District is not able to acquire water by contract it should acquire the same by other means. *See id.* § 6-13-240(10), (19). The term “acquire” has been used to permit construction in other contexts. *E.g.*, S.C. Const. art. VIII, § 16 (“Any incorporated municipality may . . . acquire by initial construction or purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants.”); *see also* Letter to Curtis M. Dillard, Op. S.C. Att’y Gen. (June 16, 2011) (interpreting legislation that permitted the Woodruff-Roebuck Water District to “[p]urchase, or otherwise acquire a supply of water for its water distribution system, and to that end to build, construct, maintain and operate water tanks, reservoirs, pumps, and such other apparatus as may be necessary to obtain and distribute water” to mean that the District could “either provide water through its own means or purchase water from an outside source” (emphasis added)). Moreover, because section 6-

13-240 is not an exhaustive list of the District's powers, the lack of specific authority to construct a treatment facility is not dispositive.

The true test of whether the District has the authority to construct a new freshwater treatment facility is whether such action is "necessary or incidental to carry out [the District's] purposes, functions and responsibilities." *Id.* As our Supreme Court has explained:

The legislative intention must be gathered from the language of the statute, not that found in any particular section or proviso, but from the statute as a whole, and it must be read in light of all the circumstances, the situation and relation of the parties, the subject of the grant, and the purpose to be attained.

....

Only such powers as are reasonably necessary to enable corporations to carry out the express powers granted and the purposes of their creation are to be implied or are to be deemed to be incidental. Accordingly, an incidental power may be defined to be one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has merely some slight or remote relation to it.

Creech v. S.C. Public Service Authority, 200 S.C. 127, 20 S.E.2d 645, 649, 652 (1942).¹ It would be a stretch of the statutory language to contend that the construction of a treatment facility is "incidental" to the express functions of the District. Treatment and distribution are distinct processes requiring different equipment, facilities, and training, and these processes often are carried out by separate entities. *See, e.g.*, S.C. Code Ann. § 44-55-40(K)-(L) (2002) (classifying treatment facilities and distribution facilities according to their functions); *id.* § 40-23-300 (2011) (specifying training requirements for operators of the various kinds of water treatment systems); *id.* § 40-23-310 (2011) (specifying training requirements for operators of the various kinds of water distribution systems); 2010 Water Quality Report Pioneer Rural Water District, available at <http://www.pioneerwater.net/2010ccr.pdf> (accessed Apr. 24, 2012) (explaining that the District purchases treated water "from the Westminster Commission of Public Works and the Seneca Light and Water Plant for distribution to [its] members"). Nonetheless, whether a new treatment facility is "necessary" to the continuance of the District's essential purposes would depend upon factual determinations that are beyond the scope of this opinion. If for some reason the District is no longer able to meet the demands of its service area using existing sources, a court might find the District

¹ While "home rule" has altered the presumptions used to determine the powers of counties and municipalities, it has not impacted the rules for construing the enumerated powers of special purpose districts. *Evins v. Richland County Historic Preservation Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("Home Rule applies only to counties and municipalities, not special purpose districts."); *see also Cooper v. S.C. Public Service Authority*, 264 S.C. 332, 337, 215 S.E.2d 197, 199 (1975) (a specific provision granting authority "to do all acts . . . necessary or convenient to carry out the powers granted" was "an exception to the general law which holds 'that powers merely convenient or useful are not implied if they are not essential having in view the nature and object of the incorporation'" (quoting *Creech*, 200 S.C. at 146, 20 S.E.2d at 652)).

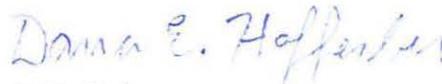
Andy Fiffick, Esquire
Page 4
April 30, 2012

could construct its own treatment facility.

Conclusion

The primary purpose of the Pioneer Rural Water District of Oconee and Anderson Counties is to “acquire, construct and operate a waterworks system” for its service area. This system is to include “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.” Such a system does not, by its plain language, include a water treatment facility. However, South Carolina Code section 6-13-240 empowers the District to exercise “all such powers as may be necessary or incidental to carry out its purposes, functions and responsibilities.” Thus, if a court found that the construction of a new freshwater treatment facility was necessary to the District’s water distribution function, it might find the District had authority to take such action.² In light of the fact that the District currently obtains water from other available sources, a determination whether a new treatment facility is necessary likely would involve questions of fact, which are beyond the scope of this opinion.

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

² We note that your request is limited in its scope; you have asked only whether article 3 of chapter 13, title 6 confers authority for the construction of a treatment facility. Accordingly, we have not addressed whether any other state or federal law might limit the authority conferred by that article, nor have we addressed whether the District might be authorized to accomplish the construction of a treatment facility by other means. *See, e.g.*, S.C. Code Ann. § 44-55-40 (concerning regulation of public water systems); S.C. Code Ann. § 6-25-5 *et seq.* (2004 & Supp. 2011) (concerning joint authority water and sewer systems).