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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 21, 2003

The Honorable Bill Sandifer
Member, House of Representatives
518-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Sandifer:

You have asked this Office to review a letter sent to you by your constituent as well as your response thereto. Your constituent recently purchased a home on Lake Keowee. In his letter to you, he notes that Oconee County "apparently has no voice in the management of the water in Lake Keowee and I, therefore, have no voice." The constituent, Mr. Story, references the existence of the Oconee County Water Authority, but notes that the Authority is virtually defunct inasmuch as "it has not been staffed nor activated." Mr. Story urges you "to promote the activation of the Oconee County Water [Authority] so that we will be in a position to be heard on critical issues concerning water management of the area."

Your response to Mr. Story references the enabling statute for the Water Authority of Oconee County. In your letter to Mr. Story, you indicate to him that you have consulted with legal counsel regarding this statute. You state that "[i]t is their opinion, as well as mine, that such an authority would have no control over the lake(s)" and that the enabling act "actually deals with potable water in water systems." In addition, you advise Mr. Story that

[i]n as much as Lake Keowee is in more than one county, an Oconee County Water Authority could not control its utilization or management. It is also important to realize that there are several lakes in Oconee County and all of them should be treated equally. If we include protection of Lake Hartwell, it becomes a multi-state situation.

You have now asked that we review your response in terms of its legal analysis. As outlined below, we agree with your response.

Law / Analysis

The Oconee Water Authority is created by Act No. 544 of 1955. The function of the Water Authority is stated in Section 1 as follows:

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[t]here is hereby created a body corporate and politic to be known as the Oconee Water Authority, hereinafter sometimes known as the "Authority". It shall be the function of the authority to acquire supplies of fresh water capable of being used for industrial and domestic purposes, and to distribute such water, in the manner provided, for industrial and domestic use within its service area. To that end, it shall be empowered to construct such reservoirs, diversion dams, impounding dams or dykes, canals, conduits, aqueducts, tunnels, water distribution facilities, water mains and water lines, as in the opinion of the Authority may be deemed necessary, and to acquire such land, rights-of-way, easements, machinery, apparatus and equipment as shall be deemed useful therefor.

Section 3 of the Act forbids the Authority from competing with existing publicly operated water systems in the county. Specifically, the Act states that the Authority "shall not sell water to be used by persons or private corporations within the corporate limits of such municipalities or areas now served by municipalities" without the consent of the municipal officers of that municipality. In addition the Authority is prohibited from "sell[ing] water elsewhere than in Oconee County, such County being hereby defined to be the service area of the Authority."

Section 4 of the Act provides that subject to the limitations set forth in Section 3, "[t]he Authority shall be fully empowered to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume, and to distribute and sell the same" Numerous corporate powers "to that end" are set forth in Section 4.

A number of principles of statutory construction are relevant to any interpretation of Act No. 544 of 1955. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1990).

Moreover, we have advised that governmental agencies or corporations, counties or other political subdivisions can exercise only those powers conferred upon them by their enabling legislation or constitutional provisions, expressly, inherently or impliedly. Op. S.C. Atty. Gen., January 8, 1999; September 22, 1988. In an opinion dated May 12, 1987, we concluded that the Oconee County Water District is most likely a special purpose district. A special purpose district is a political subdivision of the State. Op. S.C. Atty. Gen., April 26, 1993. Thus, the Oconee County Water District possesses only such powers as are expressly granted by Act. No. 544 of 1955 or which may be reasonably implied therefrom.

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Clearly, as you indicate, the legislative purpose in the enactment of Act No. 544 of 1955 is to create a special purpose district for the provision of water to the customers of the "service area," not the regulation of the lakes in the area. Inasmuch as Act No. 544 of 1955 has not bestowed upon the Authority control over the waters of Lake Keowee, such authority would not be deemed by a court to be present. Moreover, Section 1 of the Act speaks of the acquisition of "supplies of fresh water, capable of being used for industrial and domestic purposes, and to distribute such water, in the manner herein provided, for industrial and domestic use within its service area." The term "service area" with respect to the Authority is defined in Section 3 of the Act as Oconee County. As you note, Lake Keowee extends into Pickens County and Lake Hartwell extends into another state. For this reason as well, the Authority would have no jurisdiction or control over either Lake Keowee or Lake Hartwell.

It is our understanding that Lake Keowee was constructed by Duke Energy Corp. to generate hydroelectric power and that the Corporation owns the land under the lake. Thus, the Federal Energy Regulatory Commission (FERC) possesses at least a major role in the governance in this area regarding the waters of Lake Keowee. Accordingly, the regulatory authority of FERC would constitute an additional reason that the Oconee County Water Authority would possess no jurisdiction or control over such regulation of the waters of Lake Keowee.

For all the above reasons, we agree with the reasoning contained in your letter to Mr. Story. In our opinion, as you reference in your letter, the Oconee County Water Authority would possess no control or jurisdiction over Lake Keowee.

Sincerely



Robert D. Cook
Assistant Deputy Attorney General

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