



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 19, 2003

The Honorable Ralph Davenport
Member, House Of Representatives
323-B Blatt Building
Columbia, South Carolina 29211

Re: Dissolution/Merger Inman Mills and Inman-Campobello Water Districts

Dear Representative Davenport:

You have requested an opinion from this Office concerning the possible dissolution of the Inman Mills Water District and/or its take-over by another water district, possibly the Inman-Campobello Water District. In your request, you state that both Water Districts are in your House District in Spartanburg County and that the commissioners for both Districts are recommended by the Spartanburg Delegation and appointed by the Governor. By way of background, you indicate that

A commissioner, serving on the Inman Mills Water District Board, is also an employee of the Inman-Campobello Water District. Until now, I have not had any problems because the water districts were a separate entity. Inman Mills controlled the Inman Mills Water District. Their board became an every day management of the water system within the community. As you know, Inman Mills has since been closed. Inman Mills Water District is negotiating with Inman-Campobello Water District and other water systems to take over the Inman Mills Water District...

Given this background, you ask "[n]ow that this board member is in a negotiating position,

1. Would it be a conflict of interest for this particular board member to continue to serve as commissioner on the Inman Mills Water District Board? The negotiations will probably continue for some time.
2. If I were to dissolve Inman Mills and put it in the control of Inman-Campobello Water District, what authority would I have to do so, and, would there be a conflict."

LAW / ANALYSIS

Conflict of Interest

You have asked whether it is a conflict of interest for a board member of the Inman Mills Water District to continue to serve in that capacity in light of the fact that he is an employee of the Inman-Campobello Water District and the two Districts are currently negotiating a possible take-over of Inman Mills by Inman-Campobello. First, it must be noted that the ultimate conclusion of whether an actual conflict exist is a factual matter. As we have previously opined, "[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions. See Ops. Atty. Gen. dated October 9, 1985 & September 3, 1999. Thus, this opinion amounts only to an analysis of the laws that may be applicable to the situation.

The situation you describe could implicate laws prohibiting public officials from operating under a conflict of interest in two ways. One involves the master-servant relationship and the other involves a public official's participation in deciding matters which may effect a personal or private interest.

A conflict of interest exist when one individual is both master and servant. The master-servant relationship is based on common law and may be summarized as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.

....

[I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality. ...

See Op. S.C. Atty. Gen. Dated January 19, 1994. In McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), the Supreme Court considered the propriety of a public commission, charged with the management of a Confederate veterans' infirmary, hiring two commission members as employees of the infirmary. In holding that the employment of the two commission members by the commission was illegal, the Court stated:

No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.

Id. When such a master-servant conflict exist, a public official cannot continue to fill both roles. While not making a factual determination, it does not appear that the situation you describe involves a master-servant conflict at this time. A conflict could materialize, however, should the Inman Mills board gain some measure of control over the operation of the Inman-Campobello Water District. Moreover, should a master-servant conflict come into existence, participation by a board member in a decision affecting his economic interest could result in a violation of the State's Ethics Act. See S.C. Code Ann. §8-13-735.

As mentioned above, our analysis does not end with an examination of the master-servant relationship. Public policy, common law and State statutory law also prohibit public officials from participating in decisions which may effect a personal or private interest. The common law in this area "... prohibits government officers from participating in decisions in matters in which they have a personal or private interest distinct from the interest which they hold in common with members of the public." See Op. S.C. Atty. Gen. Dated January 31, 1983. Further, S.C. Code Ann. §8-13-700(B) provides, in part, that "[n]o public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest." An economic interest is defined as "... an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more." See S.C. Code Ann. §8-13-100(11)(a).

If, as a matter of fact, the Inman Mills Water District is called upon to make a decision which may effect the particular board member's personal or economic interest, then the board member should refrain from participating in the matter. It does not appear that the board member would be required to relinquish his position on the board in total. In any event, Pursuant to S.C. Code Ann. §8-13-320(11), the South Carolina General Assembly has given primary responsibility for interpreting the provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 to the State Ethics Commission. Therefore, I would suggest that specific questions regarding the board member's status be addressed to the State Ethics Commission.

Dissolution of a Water District

You have asked whether you have the authority to dissolve the Inman Mills Water District and put it under the control of the Inman-Campobello Water District. The answer to your question, who has authority to dissolve a special purpose district, depends in large part on the manner in which

the particular district was created. The Inman-Campobello Water district was created by the General Assembly pursuant to Act 939 of 1954. While I have been unable to locate a citation to a particular legislative act in reference to the Inman Mills Water District, I am assuming for purposes of your question that it was also created by an act of the General Assembly prior to March 7, 1973. The authority to dissolve special purpose districts created by legislative act prior to March 7, 1973, is found in a few statutory provisions.¹

Section 4-9-80 provides in part as follows:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, and any such act which dissolves a district or absorbs its function entirely within the county government shall provide that such act shall be effective only upon approval of such abolition or absorption by favorable referendum vote of a majority of the qualified electors of the district voting in such referendum. Upon the dissolution of any district within a county and the assumption of its function by the county government, the county shall take title to the property of the district and assume all of its debts and obligations which shall be retired by charges or assessment of taxes in those areas of the county receiving benefits from the facilities of the district

While this Section of the Code appears to authorize the General Assembly to pass legislation which would have the effect of modifying or dissolving a particular special purpose district, our Supreme Court has interpreted Section 4-9-80 as giving the General Assembly only the authority to pass general laws in this regard. In Spartanburg Sanitary Sewer District v. City of Spartanburg, et al., 283

¹ Special purpose districts may also be created pursuant to other general authority. S.C. Code Ann. §§6-11-10 (authority to establish special purpose or public service districts), 6-13-10 (authority to establish and functions of water districts - related to the chapter and article of Title 6 concerning "Rural Community Water Districts"), and 4-9-30(5) (designation of powers granted to county governing bodies) provide such authority. Districts created pursuant to §6-11-10 et seq. are done so through an election of qualified voters, but there appears to be no specific statutory provision related to the dissolution of a district created pursuant to this statute. Rural water districts created pursuant to 6-13-10, et seq. are also created by election and may be dissolved by election or by ordinance following an appropriate petition. See §6-13-120. Districts created by the county governing body in accordance with §4-9-30(5) may be abolished by ordinance. See §4-9-30(5)(e).

S.C. 67, 321 S.E.2d 258 (1983), the Court noted that the South Carolina Constitution prohibits the passage of special legislation in Article VIII, §7 and held that, therefore, Section 4-9-80 must be viewed as authorizing the General Assembly to modify special purpose districts only through the enactment of general law. The General Assembly has enacted such general laws.

Section 4-11-290 is entitled "Dissolution of special purpose districts; petitioning procedures; order of dissolution." This Section relates to "... any district created by or pursuant to an act of the General Assembly before March 7, 1973" and provides that, upon the meeting of certain conditions, such a district may be dissolved. Those conditions include a cessation of services by the district, the lack of any general obligation indebtedness, the lack of any indebtedness related to the revenues raised by the district, that, if the district has performed services within the last two years, there are no formally budgeted funds for the district to resume services, and there is no objection from the governing body of county. See §4-11-290(B). If these conditions are present, a petition seeking dissolution can be filed with the Secretary of State. Once the proper procedures have been followed, and the Secretary of State determines the above conditions exist, the district must be dissolved. See §4-11-290(G).

The South Carolina Code of Laws also provides a mechanism for dissolving special purpose districts in Chapter 11, Article 15 of Title 6. Like Section 4-11-290, Article 15 relates to any public service district "... created by or pursuant to an act of the General Assembly before March 7, 1973" See §6-11-2010(1). Section 6-11-2020 is entitled "Dissolution referendum" and states that "[n]otwithstanding any other provision of law, a special purpose district may be dissolved in accordance with this article upon a two-thirds vote of the qualified electors of the district voting in the referendum" Guidelines are set for the referendum and for establishing a "successor provider" to take the place of the dissolved district. See §§6-11-2030 through 2150.

Sections 4-11-290 and 6-11-2010 et seq. appear to be the only means available for actually dissolving a special purpose district created by or pursuant to an act of the General Assembly prior to March 7, 1973. Therefore, it appears that any dissolution of the Inman Mills Water District would have to be accomplished according to the provisions of these Code Sections.

As to the ability to have the Inman Mills Water District placed under the control of Inman-Campobello, S.C. Code Ann. §6-11-420 relates to the enlarging, diminishing or consolidating of special purpose districts and this Section should be consulted. Section 6-11-420 states that

The county boards of the several counties of the State are authorized to enlarge, diminish or consolidate any existing special purpose districts located within such county and authorize the issuance of general obligation bonds by such special purpose district by the procedure prescribed by this article.

As with the above mentioned dissolution statutes, this Section applies to "... any district created by act of the General Assembly prior to March 7, 1973... ." See §6-11-410(a). Section 6-11-420 allows the "county boards" or the county governing body (i.e. county council) to alter the boundaries of

special purpose districts by duly adopted resolution after a public hearing. See §6-11-430. Section 6-11-420 does not, however, allow a county government to completely abolish a special purpose district. See Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). Neither, can any consolidation take place which results in a duplication of services. See §6-11-435.

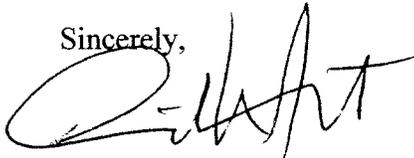
Therefore, there appear to be two options for placing control of the Inman Mills Water District under the Inman-Campobello District once Inman Mills is dissolved. First, if Inman Mills is dissolved pursuant to §4-11-290 or §6-11-2010 et seq. (and no successor provider is established through referendum), then, the county governing body could expand the service area of Inman-Campobello to cover Inman Mills. Second, pursuant to Section 6-11-2010 et seq., Inman-Campobello could be made the successor provider for Inman Mills in the dissolution referendum.

Further, without completely dissolving Inman Mills, it could be consolidated with Inman-Campobello pursuant to Section 6-11-420.² Should such a consolidation occur, conflict of interest issues may arise if a board member of Inman Mills remains in a similar capacity in the consolidated district and also remains as an employee of the consolidated district. If, on the other hand, Inman Mills, along with its board, is completely dissolved, it appears as though the conflict of interest concerns you have raised would dissipate.

CONCLUSION

A conflict of interest may arise if the board member of the Inman Mills Water District and employee of the Inman-Campobello Water District finds himself occupying the dual roles of master and servant. At this point, it does not appear that such a dual position exist. Further, should the board member of Inman Mills find that he is in the position of making a decision which effects or could effect his personal or economic interest, the board member should refrain from playing any part in the decision making process. As to dissolving Inman Mills, it appears as though the procedures outlined in Sections 4-11-290 and 6-11-2010 et seq. should be followed. It further appears that Inman-Campobello could assume the services of Inman Mills after dissolution through the referendum authorized by 6-11-2010 et seq. or by action of the county governing body pursuant to Section 6-11-420.

Sincerely,



David K. Avant
Assistant Attorney General

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² Special purpose districts may also be included in the consolidation of political subdivisions within a county. See §4-8-10 et seq. Provision is made, however, for the exclusion of special purpose districts from such consolidation.