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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

August 16, 2002

Via Facsimile (864) 942-8566 and U. S. Mail

Constance G. Moody, Director  
Voter Registration & Elections Office  
600 Monument Street, Suite 113  
Park Plaza, Box P-117  
Greenwood, South Carolina 29646

**Re: Your Letter of July 23, 2002  
S.C. Code Ann. §§6-11-350 et seq.**

Dear Ms. Moody:

In your above referenced letter, you ask for an opinion concerning the referendum provisions of S.C. Code Ann. §§6-11-350. By way of background, you indicate that

The local Metro Sewer Board is comprised of six members. At the present time, 3 members are ex-officio members of the C.P.W. Board and the Governor appoints the remaining three members. The board, as a majority voted unanimously to have a referendum question placed on the General Election ballot in the November 2002 election.

You further indicate that "[t]he Statute states that the referendum should substantially contain the following wording. 'Should the governing body,' which implies all six members. The question that was received in the office begins 'Shall the three (3) members of the governing body.'" You have also attached the Resolution of the Greenwood Metropolitan Commission [Metro Sewer Board] calling for the referendum. According to the Resolution, the specific question to be placed on the referendum ballot is

Shall the three (3) members of the governing body for the Greenwood Metropolitan Commission currently appointed by the Governor be elected by

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popular vote of the qualified electors residing in the Greenwood Metropolitan District for four (4) year terms in non-partisan elections during the November general election held in even numbered years?

Given this background and your understanding of the provisions of Sections 6-11-350 et seq., you ask this Office “[i]n your opinion, is the wording submitted by the Metro Sewer Board proper ... [and] ... [i]f the wording remains as it was submitted and the referendum passed, do you think that a legitimate challenge could be filed?”

### LAW/ANALYSIS

The primary goal of statutory interpretation is to ascertain the intent of the general assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The statute’s words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Section 6-11-351 provides that “[t]he governing body of a special purpose district may by resolution adopted by majority vote of all members of the governing body request a referendum on the question of election of governing body members be held in accordance with the provisions of this article.” Section 6-11-352 states

The referendum question must read substantially as follows:

Shall the governing body for the (special purpose district)  
be elected by popular vote of the qualified electors  
residing in the (special purpose district) for four-year  
terms in non-partisan elections during the November general  
election held in even-numbered years?

Obviously, the question called for in Section 6-11-352 relates to the governing body. Without specifying otherwise, it would appear that the Legislature intended the question apply to the entire governing body. Assuming that all six members of the Metro Sewer Board are included in its governing body, the proposed question does not appear to be in compliance with Section 6-11-352. Three out of six members of the Metro Sewer Board does not constitute the governing body. In fact, three out of six members would not even constitute a quorum of the governing body authorized to act on its behalf.

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An indication that the Legislature intended the entire governing body to be included in the referendum question can also be found in subsequent sections of the Article of the Code creating the referendum provisions. Section 6-11-354(A) provides that "... if a majority of electors from the special purpose district voting in the election vote in favor of the election of members of the district's governing body, the county election commission must conduct non- partisan elections as provided in this section." Further, Section 6-11-354(C) states that "[f]or the initial election of commissioners, all seats shall be considered vacant (emphasis added)." Without specific limiting language, the phrase "all seats" can only be interpreted to include all members of the governing body, whether they be appointed by the Governor or serve in an ex officio capacity.

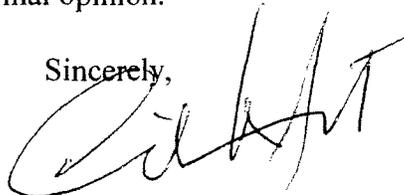
Moreover, it appears that the passage of the Act which lead to the addition of Sections 6-11-350 et seq. was in reaction to the Supreme Court's holding in Weaver v. Recreation District, 328 S.C. 83, 492 S.E.2d 79 (1997). In Weaver, the Court held that delegating to an appointed commission the authority to levy taxes violated Article X, §5 of the South Carolina Constitution (taxation without representation). 492 S.E.2d at 81,82. Recognizing the potential disruptive effect of its holding, the Court gave the decision prospective application beginning December 31, 1999. Id. Act No. 397, §2 of 1998, which added Sections 6-11-350 et seq. to the Code, became effective June 10, 1998. If Sections 6-11-350 et seq. are intended to correct the constitutional infirmities addressed in Weaver, it seems necessary that the Sections application be to the entire governing board. To read the Sections as allowing only half of the members of the board of a special purpose district to be elected, while half remain appointed, would appear to defeat the intention of the Legislature.

### CONCLUSION

Based on the foregoing, it is my opinion that "the wording submitted by the Metro Sewer Board" is not in accordance with the requirements of S.C. Code Ann. §6-11-352. Further, it is my opinion that providing for the election of only three of the six members of the Metro Sewer Board could lead to the filing of a "legitimate challenge."

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General