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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 2, 2000

The Honorable Danny Singleton
Municipal Judge, Seneca Municipal Court
Post Office Box 4773
Seneca, South Carolina 29679

Dear Judge Singleton:

Thank you for your letter of July 20, 2000, requesting an Attorney General's Opinion. According to the information you provided, at one time the Seneca Light and Water Plant cooperated fully with law enforcement officers seeking address information in order to serve warrants, subpoenas and other legal documents. Recently, however, the Seneca Light and Water Plant rescinded their open access policy and no longer provide customer address information to local law enforcement. Thus, you have inquired whether local law enforcement officers can obtain customer address information from the Seneca Light and Water Plant. For the reasons set forth below, it is my opinion that this information is subject to disclosure pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-10 et seq.

As you know, a witness may be compelled to give testimony or provide documents to the court through the issuance of subpoenas. *See* 81 AM JUR 2D *Witnesses* §2 (1992). However, a predicate to this authority is the court's jurisdiction over a defendant. In some instances, an express statutory enactment establishes the authority of a body to issue a subpoena or subpoena duces tecum, such as in the case of State Grand Jury investigations (S.C. Code § 14-7-1680). Generally, though, if no arrest has been made, the jurisdiction of the court has not yet been established. Therefore, it is not proper for a subpoena to be used by the police as an investigative tool before an arrest has been made. Accordingly, we must look elsewhere in the South Carolina Code to find a basis that enables law enforcement officers to obtain this information.

The Freedom of Information Act ("FOIA") provides that any person has a right to inspect or copy any public record of a public body, except those matters exempt from disclosure under §30-4-40 of the Code. S.C. Code Ann. § 30-4-30(a). The terms "public

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record" and "public body" are defined in Section 30-4-20(a) and (c). "Public record," according to §30-4-20(c), is broadly defined as including "all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession, or retained by a public body." In relevant part, §30-4-20(a), defines "public body" as:

. . .any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions. . . .

Based on my research as well as the information you provided, the Seneca Light and Water Plant appears to be a public entity. *See*, Act No. 1331 of 1950, providing, *inter alia*, that all funds and monies collected as a result of services rendered by the Seneca Light and Water Plant be paid to the City Clerk and Treasurer. *See also*, and Act No. 1071 of 1966, relating to the sale or disposition of lands or properties of the Seneca Light and Water Plant. Previous opinions of this Office have concluded that special purpose districts and public service districts are public bodies and, thus, are subject to the Freedom of Information Act. *See, e.g., Ops. Atty. Gen.* dated March 24, 1995 and July 23, 1992 pertaining to the Taylors Fire and Sewer District; April 24, 1981 regarding the Dorchester County Water Authority; and April 20, 1976 regarding the Western Carolina Regional Sewer Authority. Accordingly, it is my opinion that the Seneca Light and Water Plant is a public body and subject to the Freedom of Information Act.

Next, we must consider whether customer address information in the possession of the Seneca Light and Water Plant constitutes a "public record." Once again, this Office's prior opinions are illustrative. In an opinion dated May 25, 1976, Attorney General Daniel McLeod concluded that the mailing list, which included home addresses, for the South Carolina Department of Agriculture's publication, *The Market Bulletin*, was public information and subject to disclosure pursuant to the FOIA. Similarly, in an opinion dated January 7, 1981, we concluded that the subscription list for the State Archives and History Department's publication, *The South Carolina State Gazette*, was public information and likewise subject to disclosure pursuant to the FOIA. Finally, in an opinion dated July 16, 1987, this Office determined that the release of home addresses would not generally constitute an unreasonable invasion of personal privacy. "Residence addresses and telephone numbers have been deemed disclosable since the same are often ascertainable by reference to many publicly attainable books and records." Michigan State Employees

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Association v. Department of Management and Budget, 135 Mich. App. 248, 353 N.W.2d 496 (1984); Hechler v. Casey, 333 S.E.2d 799 (W.Va. 1985). This opinion cautioned, however, that "if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, a determination as to disclosure must be made on a case-by-case basis. . . ." Accordingly, based on the reasoning and conclusions of these earlier opinions, it is my opinion that local law enforcement officers may request customer address information from the Seneca Light and Water Plant pursuant to the South Carolina Freedom of Information Act. I realize it may seem awkward for one municipal agency to have to resort to the Freedom of Information Act to obtain information from another municipal entity, but again, this advice is premised on the absence of specific statutory authority granting subpoena power for investigative purposes. In the course of my research, I discovered a Nevada statute (NRS §704.201) that grants such authority to Nevada law enforcement agencies. A copy of that statute is enclosed for your review. If either you or the law enforcement agencies in your area feel strongly that such a statute would be useful here in South Carolina, you may wish to discuss this matter with the members of your legislative delegation.

This letter is an informal opinion only. It has been written by a designated Deputy 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an
Enclosure