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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 25, 1998

Emil W. Wald, Esquire
P.O. Box 790
Rock Hill, South Carolina 29731-6790

RE: Informal Opinion

Dear Mr. Wald:

Your opinion request has been forwarded to me for reply. You have asked whether the Chester County Natural Gas Authority (hereinafter "the Authority") may purchase futures contracts for natural gas. In your request, you inform this Office that the Authority is not permitted to accept delivery of natural gas purchased on a cash forward basis. Therefore, any futures purchases would not be for delivery but for profit or loss. By separate letter, Michael E. Enoch, General Manager of the Authority, has informed this Office of the same.

The Authority was created by Act No. 802 of 1954.¹ The function of the Authority is to purchase, lease, acquire, build, construct, maintain and operate natural gas distribution systems within the service area and such transmission lines as may be necessary to transport natural gas to the distribution systems from the transportation lines, which transmission lines and distribution systems will serve persons, firms, corporations, municipal corporations, and any subdivision of division of the State located in and nearby to the City of Chester and the Great Falls Public Service District or any other municipality or thickly populated area in Chester County. Act No. 528 of 1957. The service area of the Authority was increased by Act No. 1237 of 1966 to include the whole of the

¹ This Office has previously concluded the Authority would most likely be considered a special purpose district. Op. Atty. Gen. dated December 4, 1990.

Requist

Lockhart Attendance Area of Union County School District, as constituted on the effective date of the Act.

The powers of the Authority are set forth in Section 4 of Act No. 802, as amended. Included therein is the power to purchase supplies of natural gas and enter into contracts for the acquisition of natural gas. Section 4f of Act No. 802. However, the enabling legislation does not provide the Authority with the power to invest funds in general, nor does it provide the power to invest funds in futures contracts. Therefore, attention must be focused on other provisions of law.

Section 6-5-10 of the South Carolina Code of Laws authorizes certain investments by political subdivisions. This statute provides as follows:

(a) The governing body of any municipality, county, school district, or other local government unit or political subdivision and county treasurers may invest money subject to their control and jurisdiction in:

- (1) Obligations of the United States and agencies thereof;
- (2) General obligations of the State of South Carolina or any of its political units;
- (3) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government;
- (4) certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; *provided*, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.
- (5) Repurchase agreements when collateralized by securities as set forth in this section.
- (6) No load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and

loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), and (5) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.

(b) The provisions of this chapter shall not impair the power of a municipality, county, school district or other local governmental unit or political subdivision or county treasurer to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

(c) Such investments shall have maturities consistent with the time or times when the invested moneys will be needed in cash.

What must be determined is whether the purchase of futures contracts for natural gas with no intent to ever actually receive physical delivery of the natural gas, but for the sole purpose of profiting from the transaction would be considered an investment. Section 6-5-10 et seq. does not define the terms "invest" or "investment" and, therefore, the terms must be used in their common and ordinary meanings. Ex parte Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E.2d 404 (1994).

The American Heritage College Dictionary 715 (3d ed. 1993) defines "invest" in part as "to commit (money or capital) in order to gain a financial return." The term "investment" is defined, in pertinent part, as "[t]he act of investing" and "[a] property or possession acquired for future financial benefit." Id. In addition, Black's Law Dictionary 825 (6th ed. 1990) defines "investment" in part as "placing of capital or laying out of money in a way intended to secure income or profit from its employment."

Given the foregoing definitions, I am of the opinion that the Authority's purchase of futures contracts in natural gas for the sole purpose of realizing a profit on the transaction would be considered an investment for purposes of Section 6-5-10. The General Assembly has authorized several permissible investments by political subdivisions, none of which include the investment in futures contracts. A cardinal rule of statutory construction is "expressio unius est exclusio alterius" or "the enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania National Mutual Casualty Insurance Company v. Parker, 282 S.C. 546, 320 S.E.2d 458 (1984). Therefore,

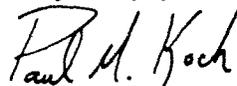
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as the statute does not currently authorize political subdivisions to invest in futures contracts, the Authority would not be permitted to invest its funds in futures contract for natural gas.²

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

² The Attorneys General of both Virginia and Louisiana, in interpreting laws similar to the law of South Carolina, have also concluded that investment in futures contracts by the state or one of its political subdivisions is not authorized by law. 1986-87 Va. Op. Atty. Gen. 25; La. Atty. Gen. Op. No. 85-334.