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The State of South Carolina



Office of the Attorney General

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December 11, 1990

Leo H. Hill, Esquire
Hill, Wyatt & Bannister
Post Office Box 2585
Greenville, South Carolina 29602

Dear Mr. Hill:

On behalf of the Breezy Hill Water and Sewer Company, you have asked whether that entity may participate in the cooperative purchasing program under the South Carolina Consolidated Procurement Code, S. C. Code Ann. § 11-35-10 et seq. (1986).

Cooperative purchasing is authorized by § 11-35-4810, which provides in part that "[a]ny public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants." A "public procurement unit" includes a local procurement unit, § 11-35-4610(5), which is defined in § 11-35-4610(3) as "any political subdivision or unit thereof which expends public funds for the procurement of supplies, services or construction." It must thus be determined whether the Breezy Hill Water and Sewer Company meets this definition. 1/

1/ By an opinion of this Office dated April 19, 1983, this Office stated that "[t]he Materials Management Office (MMO) of the Division of General Services has in the past been liberal in interpreting definitions, etc., to encourage cooperative purchasing." In a telephone conversation with an attorney at the Division of General Services, we were advised that the definition of "local procurement unit" is interpreted liberally; for example, volunteer fire departments are authorized to participate in cooperative purchasing.

Mr. Hill
Page 2
December 11, 1990

Formerly in existence was the Breezy Hill Water and Sewer District, created by the General Assembly in 1963 [53 STAT. 712 (1963)] and abolished by act of the General Assembly in 1968 [55 STAT. 3291 (1968)]. The Breezy Hill Water and Sewer Company was chartered by the Secretary of State on June 14, 1968. See Op. Atty. Gen. dated March 16, 1981.

Breezy Hill Water and Sewer Company was incorporated under the provisions of §§ 33-35-10 et seq., which statutes permitted the formation of a service organization which could be financed through and under the provisions of the Consolidated Farmers Home Administration Act. The entity was formed for the purpose of providing water and sewer service within its geographic area. The powers of such entities are specified in §§ 33-35-80 and 33-35-90 and include several powers traditionally exercised by political subdivisions such as incurring indebtedness and exercising eminent domain.

You have advised that Breezy Hill was organized with public funds and receives revenues from the public serviced within its territorial area. Further, you have advised that Breezy Hill has registered with the Secretary of State pursuant to § 6-11-1610 et seq., which statutes require biennial registration and reporting by special purpose and public service districts.^{2/} Apparently the Secretary of State has accepted the filing and has not found Breezy Hill not to be required to file the report under those statutes.

^{2/} Entities required to file reports under § 6-11-1610 et seq. are those districts

created by an act of the General Assembly or pursuant to general law and which provides any local government power or function including, but not limited to, fire protection, sewerage treatment, water or natural gas distribution, recreation, and means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6. Special purpose districts do not include any state agency, department, commission, or school district.

In Op. Atty. Gen. No. 84-132, this Office encouraged a broad and open-ended interpretation of the terms "special purpose district" or "public service district."

Mr. Hill
Page 3
December 11, 1990

As you have also pointed out, the General Assembly in 1988 authorized that such an entity organized under Chapter 35 of Title 33 for the purpose of supplying water and sewer services, might become an employer under the South Carolina Retirement System, see § 9-1-470, thus placing such an entity on the same footing as a county, municipality, or other political subdivision of the State vis a vis participation in the State Retirement System.

While it is a close question, based on the foregoing indicia, it is our opinion that a liberal interpretation of § 11-35-4610(3) would permit the Breezy Hill Water and Sewer Company to participate in the cooperative purchasing arrangements authorized in § 11-35-4810 et seq. In so concluding, we must point out that Breezy Hill might not be considered a "political subdivision" for all purposes and therefore limit today's opinion to consideration of cooperative purchasing only. Furthermore, Breezy Hill must apply to participate in the cooperative purchasing program; final authorization to participate must necessarily rest with the appropriate officials at the Division of General Services. This opinion is not intended to usurp that decision-making authority.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions