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January 16, 1989

The Honorable Paul E. Short, Jr.
Member, House of Representatives
309-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Short:

By your letter of January 5, 1989 with enclosures dated March 8 and 22, 1988, you have inquired whether Chester County Council can take over the control and appointment of the Chester Metropolitan Water District and the Chester Sewer District. If so, you then have inquired as to the procedure to be followed.

As you are already aware, this Office has undertaken research on these entities several times in previous years. These districts have been determined to be special purpose or public service districts by an opinion of this Office dated September 3, 1985, as well as political subdivisions for purposes of participating in the state retirement program. Op. Atty. Gen. dated May 3, 1965. Thus, these opinions provide a background from which the analysis of your questions may begin.

The taking over of a special purpose district within its boundaries by Dorchester County Council was the issue decided in Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). As noted in that decision, Section 6-11-420 et seq. of the Code of Laws of South Carolina (1976), which permits county councils to enlarge, diminish, or consolidate the service areas of specified special purpose districts, does not permit a county council to abolish a special purpose district. The court in Berry also considered Section 4-9-80 of the Code and Article VIII, Section 16 of the State Constitution which authorizes a county to acquire, operate, and maintain water and sewer systems; as to Section 4-9-80, the court stated:

Section 4-9-80 states that preexisting special purpose districts shall continue to function until they are dissolved by Act of the

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General Assembly after a favorable referendum of the district's voters.

Hence, we conclude that the county cannot abolish the [Dorchester County Water] Authority. No legislative act or constitutional provision authorizes such a step; nor has the Authority consented to any assumption of its duties by the county.

Id., 279 S.C. at 547. In Berry, Dorchester County Council ostensibly attempted to reduce the size of the service area of the special purpose district in question and held the referendum required by Article VIII, Section 16, but council conceded that its intent was to abolish the district and fully assume the functions of the district. This, the court said, could not be done. A copy of the Berry decision is enclosed herewith for your reference.

A copy of Section 4-9-80 of the Code is also enclosed herewith. Ostensibly, a county council may hold a referendum to abolish a special purpose district and assume its functions upon adoption of an act by the General Assembly as described therein. The act required by the General Assembly would be deemed violative of Article VIII, Section 7 of the State Constitution, which prohibits the adoption of legislation for a specific county. See Spartanburg Sanitary Sewer District v. City of Spartanburg et al., 283 S.C. 67, 321 S.E.2d 258 (1984), a copy of which is enclosed. Based on the Spartanburg case, it is likely that legislation following Section 4-9-80 of the Code would be found to be unconstitutional.

Section 44-55-1410 of the Code permits a county to operate water and sewer facilities within the service area of special purpose districts existing as of March 7, 1973, with the consent of the governing body of the special purpose district. As noted in Op. Atty. Gen. No. 78-127, initial involvement by a county in providing water and sewer services must be handled in accordance with Article VIII, Section 16 of the State Constitution. This Code section does not appear to contemplate the abolition or taking over of a special purpose district by a county, however. Copies of Section 44-55-1410 and the above-cited opinion are enclosed.

As to appointment of members of the governing bodies of these districts by Chester County Council, Section 4-9-170 of the Code provides the following:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution.

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Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

As noted earlier, each district in question has already been determined to be a special purpose district and a political subdivision; thus, Section 4-9-170 precludes Chester County Council from appointing the members of the governing bodies of these districts.

In conclusion, it is unlikely that Chester County Council could take over the control and appointment of the Chester Metropolitan Water District and the Chester Sewer District. To some degree, Chester County could operate water and sewer facilities within areas served by the districts, with the consent of the districts' governing bodies, and if the referendum held pursuant to Article VIII, Section 16 should be favorable. There is no authority for a county to abolish a special purpose district (or to decrease its service area to the point of not being able to function), then to assume the functioning of the districts, until the General Assembly should adopt a general law so authorizing the county.

We apologize for the brevity of this opinion; however, your letter was received by this Office on January 11, 1989 with a deadline of January 16, 1989. In the interest of an expedient reply, we have enclosed copies of materials which would have ordinarily been quoted from more extensively. Too, because this is a local matter, our policy requires consultation with the county attorney, who would be in the ultimate position to advise council. Hence, it must be acknowledged that the county attorney may have given advice, perhaps contrary to the positions taken herein, on these matters. The final

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advice given to council would be within the purview of the county attorney, and we do not intend herein to usurp his authority.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions