

The State of South Carolina



Office of the Attorney General

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April 13, 1989

The Honorable Zelma R. Fielding
Mayor, Town of Lincolville
Post Office Box 536
Lincolville, South Carolina 29484

Dear Mayor Fielding:

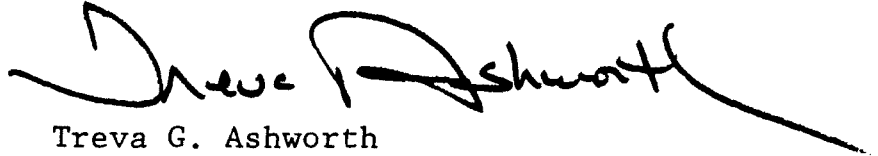
Your letter addressed to Attorney General Medlock has been referred to me for reply. You have stated that in August, 1981, the Mayor and Council of Lincolville established a water and sewer department by town ordinance, and in 1987 the Town amended this ordinance. Section 4-1001 of the ordinance creates a Public Works Commission, composed of four appointed members and one elected member who serves as chairman. Section 4-1002 of the ordinance creates a water and sewer department, which is to be administered by the supervisor of the water and sewer system subject to the general control of the commissioners of public works. In your letter you indicated that the elected commissioner presumes to exercise greater authority over the affairs of the water and sewer department by virtue of his elected position and, presumably, his position as chairman of the Public Works Commission. You requested an opinion concerning whether or not the elected Commissioner should exercise more authority over this Board than the other appointed members.

The general law, applicable in this situation, is that authority vested in a board or commission for public purposes may be exercised by a majority of the members if all have had notice and opportunity to act and a quorum, or the number fixed by statute, are present. The presence and vote of a quorum is necessary, and the action of less than a quorum of a public body is void. 1 Am.Jur.2d Administrative Law §196. Unless otherwise provided by statute, the authority of a commission may not be exercised by a single member of such body, or less than a majority. 73 C.J.S. Public Administrative Law and Procedure §20. Therefore, the response to your question is that the elected commissioner has no individual authority to single-handedly make decisions concerning direction and control of the water and sewer

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department. Instead, all such decisions must be made by a majority vote of a quorum of the commissioners of public works, except where the Town ordinance provides otherwise. See also, Pettiford v. S.C. State Board of Education, 218 SC 322, 62 S.E.2d 780 (1950) as to what constitutes an unlawful delegation of power.

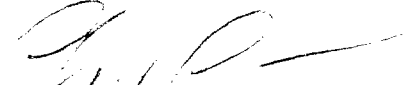
Sincerely yours,

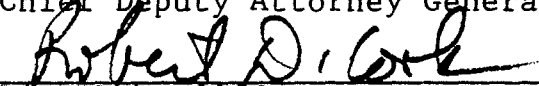


Treva G. Ashworth
Senior Assistant Attorney General

TGA:bvc

REVIEWED AND APPROVED BY:



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