

The State of South Carolina

February 3111



Office of the Attorney General

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February 19, 1988

The Honorable James G. Mattos
Member, House of Representatives
4 Yarmouth Court
Greenville, South Carolina 29611

Dear Representative Mattos:

As you know, Attorney General Medlock referred your letter dated January 27, 1988, to me for response. By your letter, you requested an "Opinion on the establishment of a grievance procedure to be used by the Parker Special Purpose District in Greenville, South Carolina." Consistent with our usual Office policy, I requested and received from Parker Special Purpose District's attorney, Shaefer B. Kendrick, his conclusion addressing your question. In his letter dated February 5, 1988, Mr. Kendrick advised, in relevant part:

I rendered an opinion to the Commissioners of the above Service District that no statutory authority existed for creation of a Grievance Committee with the power to act on its findings.

. . . .

. . . It is my opinion that decisions on grievances are not ministerial and, consequently, would require an enabling act for the creation of a binding grievance procedure, this being a power presently vested only in the Commissioners of Parker Sewer and Fire Subdistrict.

[Copy of Mr. Kendrick's letter dated February 5, 1988, enclosed for your information.] I concur with the ultimate conclusion reached by Mr. Kendrick.

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Mr. Kendrick advises in his letter: "Parker Subdistrict is a part of what was originally the Greater Greenville Sewer District which has evolved into Western Carolina Regional Sewer Authority." Similarly, this Office has previously opined:

The Parker Sewer and Fire District was created pursuant to Act No. 996 of 1930 and was originally known as Parker Water and Sewer Sub-District of the Greater Greenville Sewer District. See, Floyd v. Parker Water and Sewer Sub-District, 203 S.C. 276, 17 S.E.2d 223 (1941) for a history of the District. The name of the District was changed to its present name by Act No. 1837 of 1972. The Supreme Court in Floyd v. Parker Water and Sewer Sub-District, supra, has called the District "an arm of government created by the legislature for a specific public purpose...." Id., 203 S.C. at 285. Duties of the commissioners are found in Act No. 443 of 1929 and include such powers and duties as entering into contracts, eminent domain, operating and maintaining a sewer system, issuance of bonds, and so forth.

S.C. Att'y Gen. Op., Nov. 18, 1987. Specifically, 1929 S.C. Acts 443 §6 provides:

Powers - Provisos. - That said Committee shall have the power to construct, establish, enlarge, maintain, conduct and operate water lines and pipe lines in said district; to acquire, purchase, lease and sell such real estate, easements, and personal or mixed property as they may deem necessary; to make any and all contracts that they may deem necessary to carry out the provisions of this Act; to employ such engineers, office and clerical help as they may deem necessary, and to fix the compensation of such employees; to make any and all regulations which they consider necessary to effectuate the purpose of this Act, and generally do all things necessary for the purpose of creating, maintaining, and operating a water and sewer system in said subdistrict adequate for the protection of health in said district, and for the establishment of proper sanitary

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conditions, so far as they pertain to the operation of water and sewer systems: Provided, That all costs of the installation of said lateral lines and of connecting them with the main trunk lines shall be paid by the subdistrict in which said laterals are installed. Where the lateral sewer lines of subdistricts are connected with the main trunk lines, subdistricts shall be charged on the basis of the cost of connections with vitrified clay pipe; wherever it is in the opinion of the Commission necessary to use cast iron pipes in making such connections, the difference in such cost shall be borne by the Greater Greenville Sewer District: Provided, Further, That where lateral water and sewer lines have already been installed in any part or parts of such subdistrict by any person, firm or corporation, the committee is hereby authorized to pay such person, firm, or corporation for such lateral lines, or portions thereof adopted and used by it, a reasonable price to be fixed by the committee, based upon the value such lateral lines may have in connection with the entire lateral systems in such districts: Provided, Further, That before the committee may purchase any lateral sewer lines, the Commission must first approve the lines as properly constructed to become a part of its sewerage system. [Emphasis added.]

The South Carolina General Assembly has enacted considerable legislation applicable to the Greater Greenville Sewer District and Parker Sewer and Fire District since 1929, see, e.g., 1930 S.C. Acts 996; 1979 S.C. Acts 135; however, the provisions concerning employment have remained substantially unchanged. Cf. 1933 S.C. Acts 509 (containing identical language concerning employment); 1941 S.C. Acts 408 (containing identical language concerning employment); 1961 S.C. Acts 563 (authorizing employment of attorneys to represent the district); 1965 S.C. Acts 622 (containing additional powers, but silent as to employment); 1971 S.C. Acts 756 (containing additional powers, but silent as to employment); 1973 S.C. Acts 675 (containing additional powers, but silent as to employment); 1974 S.C. Acts 926 & 1189 (addressing special purpose districts in existence prior to adoption of S.C. Const. art. VII). See also S.C. Code Ann. §§6-11-10 through -300 (1976) (general provisions concerning Special Purpose or Public Service Districts Generally).

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Axiomatically, administrative agencies, which are creatures of statutes, have no common-law or inherent jurisdiction or powers; therefore, they have only such powers as have been granted to or conferred upon them by statute, expressly or by implication. See Piedmont & Northern Ry. Co. v. Scott, 202 S.C. 207, 24 S.E.2d 353 (1943). Accord 1 Am. Jur.2d Administrative Law §70; 73 C.J.S. Public Administrative Law and Procedure §49; Sutherland Stat. Constr. §§65.01 & 65.02 (4th ed. 1986). In Bostic v. City of W. Columbia, 268 S.C. 386, 390, 234 S.E.2d 224, 226 (1977), the South Carolina Supreme Court stated that "enabling legislation is not merely precatory, but prescribes the parameters of conferred authority." According to 73 C.J.S. Public Administrative Law and Procedure §51,

[t]he powers of administrative agencies, bodies, or officials are not to be derived from mere inference, and their jurisdiction cannot be conferred by implication. As a general rule, however, in addition to the powers expressly conferred on them by organic or legislative enactment, such officials and bodies, in the absence of restricting limitations of public policy or express prohibitions, or express provision as to the manner of exercise of the powers given, have such implied powers, and only such implied powers, as are necessarily inferred or implied from, or incident to, the express powers granted to, or duties imposed on, them. Thus, they possess the powers reasonably necessary and fairly appropriate to make effective the express powers granted to, or duties imposed on them, and to accomplish the purposes of the legislation which established them.

The implied powers of administrative agencies and bodies are not to be extended beyond fair and reasonable inferences, or what may be necessary for the just and reasonable execution of the powers expressly granted. The general power conferred on an administrative board by a statute vesting it with all powers necessary to carry out the provisions of the act that created it has been held not to extend its jurisdiction, and to relate only to those matters over which it has been given jurisdiction. [Footnotes omitted.]

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Sutherland Stat. Constr. §55.03 (4th ed. 1986) provides, in part:

The usual standard used to interpret a statute by implication or inference is used to determine if the statute embraces such consequential applications and effects as are necessary, essential, natural or proper. Although these are not terms having precise meaning capable of measured application, it seems fair that in order for a consequence to be implied from a statute there must be greater justification for its inclusion than a consistency or compatibility with the act from which it is implied. "A necessary implication within the meaning of the law is one that is so strong in its probability that the contrary thereof cannot reasonably be supposed." And it has been more fully explained that: "[s]uch implication, inference, or presumption, as the fact may be, is always indulged to supply a deficiency, and is never permitted to contradict the act, grant, or instrument whatsoever involved. Moreover, to authorize the supplying of a power by implication, inference, or presumption of intention, it is not sufficient that the act is advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred." [Footnotes omitted.]

Pursuant to 1929 S.C. Acts 443 and subsequent legislation [as listed in the attachment to Mr. Kendrick's letter, dated February 5, 1988], Parker Sewer and Fire District was granted express authority to hire certain employees and to fix their compensation; however, this legislation is silent concerning a grievance procedure. S.C. Code Ann. §§8-17-110 through -160 (1976) [County and Municipal Employees Grievance Procedure Act] and S.C. Code Ann. §§8-17-310 through -380 (1976) [State Employee Grievance Procedure Act of 1982] create a grievance procedure for state and local employees. See also S.C. Code Ann. §4-9-30(7) (1976) (concerning personnel policies and procedures for county employees). Your letter does not indicate (and I am unaware of any other information to indicate) that employees of Parker Sewer and Fire District are county employees subject to the County and Municipal Employees Grievance Procedure Act. The

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definition of "agency" in the State Employee Grievance Procedure Act specifically excludes "special purpose districts, and other units of local government...." S.C. Code Ann. §8-17-320(1) (1976). Therefore, employees of Parker Sewer and Fire District would not be governed by the State Employee Grievance Procedure Act of 1982. Thus, no express statutory grievance procedure appears to exist for employees of Parker Sewer and Fire District. Moreover, in light of the enactment of the County and Municipal Employees Grievance Procedure Act and the State Employee Grievance Procedure Act of 1982 as well as the language contained in S.C. Code Ann. §4-9-30(7) (1976), the language of the enabling legislation for Parker Sewer and Fire District probably cannot be reasonably interpreted to include by implication the power¹ or jurisdiction over a grievance procedure for its employees.¹

In conclusion, the enabling legislation for the Parker Sewer and Fire District [as listed in the attachment to Mr. Kendrick's letter, dated February 5, 1988] contains no express authorization of a grievance procedure for its employees and probably cannot be reasonably interpreted to include by implication the power or jurisdiction over a grievance procedure for its employees. Moreover, the County and Municipal Employees Grievance Procedure Act and the State Employee Grievance Procedure Act of 1982 are apparently not applicable to employees of Parker Sewer and Fire District.

If I can answer any further questions, please do not hesitate to contact me.

Sincerely,

Samuel L. Wilkins

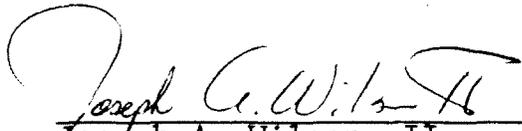
Samuel L. Wilkins
Assistant Attorney General

SLW/fg
Enclosure

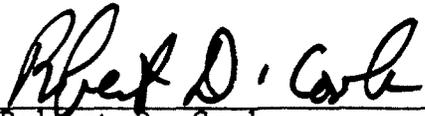
¹ No opinion is expressed herein concerning potential application of the South Carolina Supreme Court's recent decision in Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452 (1987) ("[A] jury can consider an employee handbook, along with other evidence, in deciding whether the employer and employee had a limiting agreement on the employee's at-will employment status.")

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REVIEWED AND APPROVED BY



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