

The State of South Carolina



Opinion 1187-96
PJ 257

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3680

December 1, 1987

The Honorable Carroll A. Campbell, Jr.
Governor, State of South Carolina
State House
Columbia, South Carolina

Dear Governor Campbell:

You have requested an opinion whether Article VIII, Section 16 of the South Carolina Constitution requires a municipality to conduct a referendum, if it has not done so previously, before entering into a Community Development Block Grant agreement with the Office of the Governor to obtain funds to be loaned to a special purpose district or a private water company, or before entering into an agreement to loan those funds to such an entity to construct a water utility system. It is our opinion that Article VIII, Section 16 of the Constitution does not require a referendum under those circumstances.

The Constitution requires that:

Any incorporated municipality may, upon a majority vote of the electors of such political subdivision who shall vote on the question, acquire by initial construction or purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants.

Article VIII, Section 16, South Carolina Constitution (emphasis added). The words of a constitutional provision are to be interpreted according to their ordinary and popular meaning. State v. Broad River Power Company, 177 S.C. 240, 265, 181 S.E. 41, 52 (1934). To "acquire" means to come into ownership. Weinberg v. Baltimore & Annapolis R. Co., 88 A.2d 575, 577 (Md. 1952). To "operate" means to manage or conduct. F. W. Woolworth Co. v. Erickson, 127 So. 534, 536 (Ala. 1930). This constitutional provision plainly requires a referendum before a municipality comes into ownership or begins to conduct the operation of such a facility.

The Honorable Carroll A. Campbell, Jr.

Page 2

December 1, 1987

In this instance, however, the municipality is not acquiring or operating the water utility system; instead it proposes to receive and lend funds by means of which some other entity will own and operate the system. In many respects its position with respect to the utility system would be similar to that of a municipality that issues revenue bonds and then lends the proceeds to a private utility or some other commercial enterprise for the construction of some project. § 48-3-10, et seq., S.C. CODE, 1976 (as amended); § 4-29-10, et seq., supra. The municipality would not, by virtue of the loan, be deemed to be owning or operating the utility or other enterprise borrowing the bond proceeds. The same reasoning would appear to be applicable here.

This opinion may be distinguished from Op. Atty. Gen. 78-127 which concluded that a county must comply with a similar referendum requirement of Article VIII, Section 16, applicable to counties if it receives grant funds and then contracts with some other entity to acquire, construct, operate and maintain the utility facilities in the place of the county. The situation described in your letter is different from that situation in that the municipality here would have no involvement whatsoever in the business of providing water service. It would simply be lending money to another entity for that purpose. It is our further understanding that the municipality will not pledge or expend any of its own funds incident to this transaction. It is simply serving as a conduit of funds. This further underscores the reasons why the Article VIII, Section 16 requirement for a referendum would not apply. Mauldin v. City of Greenville, 33 S.C. 1, 24, 11 S.E. 434, 438 (1890). (The earlier constitutional prohibition against utility acquisitions was intended to protect future generations of taxpayers within the municipality.)

For all the foregoing reasons, it is our opinion that Article VIII, Section 16 of the South Carolina Constitution does not require that a municipality conduct a referendum as a condition to receiving funds pursuant to a Community Development Block Grant and thereupon lending those funds to another entity for use in constructing a water utility system.

Sincerely yours,

David C. Eckstrom /DCE

David C. Eckstrom
Assistant Attorney General

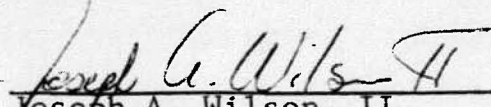
DCE:tgc

The Honorable Carroll A. Campbell, Jr.

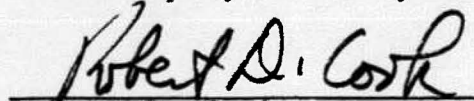
Page 3

December 1, 1987

Reviewed and Approved By:



Joseph A. Wilson, II
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions