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August 13, 1985

The Honorable Thomas M. Marchant, III
Member, House of Representatives
Post Office Box 816
Greenville, South Carolina 29602

Dear Representative Marchant:

Concerning the Western Carolina Regional Sewer Authority, you have asked for clarification on the following questions:

1. Can Commissioners/Commission opt for a compensation plan drawing \$25.00 per meeting and change on a routine or arbitrary basis to \$35.00 per day and further change back to the original plan at their discretion?
2. Can individual commissioners opt for a compensation plan as mentioned above on an individual basis?

In an opinion of this Office to you dated January 23, 1985, the statutes relevant to your inquiry were cited verbatim and discussed. To summarize, we would reiterate that Section 6-11-91, Code of Laws of South Carolina (1984 Cum.Supp.), permits the governing body of a special purpose district to adopt, by resolution, a compensation plan providing, inter alia, per diem not to exceed thirty-five dollars per day. Section 6-11-92 of the Code permits the governing body to continue to use the compensation or benefit plan in effect on June 16, 1980, the effective date of Sections 6-11-91 and -92. In the opinion of January 23, 1985, interpreting these Code sections, we advised that

the Commission is entitled to continue following Act No. 276 of 1979, to receive twenty-five (\$25.00) dollars per meeting.

REQUEST LETTER

Continuation Sheet Number 2
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Or, the Commission may opt, by resolution, to receive thirty-five (\$35.00) dollars per day, regardless of the number of meetings held on a given day. 1/

As provided by statute, a resolution or ordinance is necessary to change the manner in which the commissioners are compensated. There is no provision within Act No. 515, 1980 Acts and Joint Resolutions, in which Sections 6-11-91 and -92 were enacted, for individuals to select their own compensation plans; rather, adoption of a resolution or ordinance by the governing body as a whole applicable to the entire commission is contemplated by the plain language of Section 6-11-91. Absent ambiguity, this plain language must be controlling. State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 (1983).

As you have explained your first question, you are asking whether the commissioners may, on practically a daily basis, change from one compensation plan to another. Section 6-11-91 of the Code empowers the commissioners to fix or change their compensation or other benefits by resolution or ordinance. Certainly a resolution or ordinance adopting a particular compensation plan would continue to be effective until it is revoked or replaced by a subsequent resolution or ordinance. However, the plain language of Section 6-11-91 would not appear to authorize the adoption of an ordinance which would permit election by the commissioners as a whole, on a day-to-day or routine or arbitrary basis, from several compensation plans.

1/ As to the payment for each of several meetings scheduled on the same day if the compensation plan of twenty-five (\$25.00) dollars per meeting were followed, the opinion of January 23, 1985, further provided:

Assuming that each meeting is readily identifiable as a separate function, there should be no difficulty in compensating Commission members in attendance. Good faith on the part of the Commissioners is presumed in setting the meetings and determining the agendas... .

We reaffirm that statement in today's opinion.

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In conclusion, we would advise that:

1. A resolution or ordinance adopting a particular compensation plan would remain in effect until it is replaced or revoked by a subsequent ordinance or resolution. There appears to be no authorization for adoption of an ordinance or resolution permitting election of a compensation plan on a day-by-day, routine, or arbitrary basis.
2. Individual commissioners may not opt to follow a compensation plan different from that adopted by the governing body; for example, all commissioners would follow Act No. 276 of 1979, or all commissioners would be compensated according to a plan adopted pursuant to Section 6-11-91 of the Code.

We trust that the foregoing has satisfactorily responded to your inquiry. If we may provide additional assistance, please advise us.

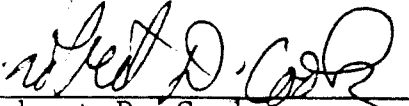
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:



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