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May 23, 1985

The Honorable Joseph F. Anderson, Jr.
Member, House of Representatives
323-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Anderson:

By your letter to Attorney General Medlock of May 7, 1985, you have asked for the opinion of this Office as to whether it would be proper for the General Assembly to pass legislation affecting multi-county special purpose or public service districts and whether, if the General Assembly could not so act, concurrent action of the appropriate county councils would be necessary to effect certain changes. You particularly referenced the Edgefield County Water and Sewer Authority, which encompasses parts of Aiken and Edgefield counties; you would like to introduce legislation to change the composition of the governing board and otherwise make small technical changes.

As you are well aware, Article VIII, Section 7 of the State Constitution states that "[n]o laws for a specific county shall be enacted... ." This constitutional provision has been interpreted by the South Carolina Supreme Court in such cases as Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976); Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); and, most recently, Spartanburg Sanitary Sewer District v. City of Spartanburg, ___ S.C. ___, 321 S.E.2d 258 (1984). For special purpose districts lying completely within a single county, the Supreme Court has interpreted Article VIII, Section 7 as prohibiting an act by the General Assembly for that district.

The Supreme Court has found constitutionally permissible legislation dealing with special purpose districts comprised of

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territory located in more than one county. Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975). This Office recently examined the constitutionality of legislation enacted for the Western Carolina Regional Sewer Authority, which is comprised of portions of three counties. See Op. Atty. Gen. dated February 5, 1985 (enclosed). In that opinion we noted the following language from Kleckley, supra:

[T]he prohibition [of Article VIII, Section 7] only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties. ...

The record here clearly establishes that the function of this airport is not peculiar to a single county or counties. ... It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7.

265 S.C. at 184-185. Emphasizing the regional nature of the sewer authority in question and that we believed a court could determine that the powers, duties, functions and responsibilities involved in the provision of sewer services were not peculiar to a county, we concluded that legislation for the sewer authority in question would pass constitutional muster if challenged in court. See also Op. Atty. Gen. dated April 3, 1985 (enclosed).

Applying this reasoning and the language from Kleckley to the Edgefield County Water and Sewer Authority, if it should be determined that the Authority is regional in scope and further that the Authority's functions, powers, duties, and responsibilities are not peculiar to a county, then it is possible that an act by the General Assembly would be found constitutional by a court. We would note that we have not examined any proposed legislation but are merely commenting on the concept of such legislation.

You have also asked whether it would be appropriate for the Edgefield and Aiken county councils to approve concurrent resolutions or ordinances to effect such changes. Section

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4-9-80, Code of Laws of South Carolina (1984 Cum.Supp.), provides for certain changes to be made by a county council when that council has power to appoint members of the governing body of a special purpose or public service district; since the members of the Edgefield County Water and Sewer Authority are appointed by the Governor, this section would not be applicable. Other than Section 4-9-80, we are unaware of any other Code sections which would authorize county councils, acting separately or jointly, to alter the composition of the governing body of a special purpose or public service district.

We trust that the foregoing will be of assistance in your determination to introduce legislation relative to the Edgefield County Water and Sewer Authority. Please advise if we may provide clarification or additional assistance.

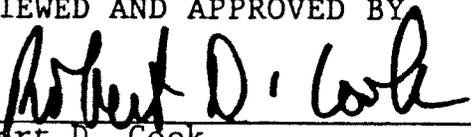
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosures

REVIEWED AND APPROVED BY



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