

The State of South Carolina

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May 12, 1987

The Honorable Alexander S. Macauley  
Senator, District No. 1  
612 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Macauley:

By your letter of April 23, 1987, you have asked that this Office examine Act No. 544, 1955 Acts and Joint Resolutions, creating the Oconee County Water Authority, and advise you as to the possibility of implementing these provisions now, in light of the Home Rule Act adopted subsequent to Act No. 544. The nature and status of the Authority must first be examined.

Based upon the reasoning contained in Op. Atty. Gen. No. 84-132 (enclosed), we believe that the Authority would most likely be a special purpose district rather than an agency of Oconee County. The Authority was established for a single purpose, provision of water services. By Section 1 of Act No. 544, the Authority is declared to be a "body corporate and politic" and in Section 4 has been given corporate powers and duties. The Authority members are to be appointed by the Governor upon recommendation of a majority of the Oconee County Legislative Delegation following nomination by the specified procedure. Section 4(25) authorizes the Authority to "borrow money and to make and issue negotiable bonds, notes and other evidences of indebtedness, payable from all or any part of the revenues derived from the operation of its facilities." The entity was not created by Oconee County Council as a special tax district but by the General Assembly as stated above. Enough of the criteria described in the enclosed opinion have been met to call the Authority a special purpose district.

You have advised that this Act has never been implemented and have asked how adoption of the Home Rule Act, Act No. 283 of 1975, might affect implementation at this time. County councils have been precluded from taking certain actions with respect to special purpose or public service districts by statutes such as Sections 4-9-80 and 4-9-170 of the Code of Laws of South Carolina (1976, as revised), though a county council's action may be necessary to expand the boundaries of certain special purpose

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districts, for example. (See Section 6-11-410 et seq., for example.) Because of the general "hands off" approach imposed upon county councils by the legislature in the home rule statutes, the Home Rule Act would not prevent Act No. 544 of 1955 from being implemented at this time. It should be noted that Oconee County Council could establish its own mechanism for water treatment and distribution, by virtue of Section 4-9-30(5), if that body so desired. See also Article VIII, Section 16 of the State Constitution.

It would appear that, at present, the Authority is similar to the South Carolina Court of Appeals, which had been established by the legislature but could not operate without the requisite number of properly-elected judges. In Maner v. Maner, 278 S.C. 377, 296 S.E.2d 534 (1982), the Supreme Court stated that "an office created by statute comes into existence immediately upon the statute taking effect." 278 S.C. at 383. A newly-created office is vacant upon the instant of its creation and remains vacant until it has been duly filled. As with the Court of Appeals at the time of the Maner decision, the Authority exists but its members must be duly appointed to implement Act No. 544 of 1955, to fill the vacancies and permit the Authority to become operative. 1/

We trust that the foregoing has been responsive to your inquiry. Please advise if we may provide clarification or additional information.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook /PDP*

Robert D. Cook  
Executive Assistant for Opinions

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1/ Section 4-9-170 of the Code would preclude Oconee County Council from taking over appointments to the governing body of a special purpose district. Unless a change should be made by a general law, appointment of Authority members would remain as specified in the Act.