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The State of South Carolina



Office of the Attorney General

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September 3, 1985

William C. Keels, Esquire
Chester County Attorney
Post Office Box 547
Chester, South Carolina 29706

Dear Mr. Keels:

By correspondence from Mr. John A. Lucas, member of Chester County Council and from you, as County Attorney on behalf of Chester County Council, this Office has been asked to address several questions in reference to the Chester Sewer District and the Chester Metropolitan (water) District, as follows:

1. Does Chester County Council have absolute legislative authority over both of these special purpose districts?
2. Will the Attorney General take the necessary action to preclear Act No. 1486, 1968 Acts and Joint Resolutions, with the United States Department of Justice?
3. Whether one serving as either Town Clerk or as a member of the Town Council of the Town of Richburg may properly serve as a commissioner of the Chester Metropolitan (water) District?
4. Can the commissioners of the Chester Metropolitan (water) District take control over a privately-owned water system without providing the resident users a vote in a referendum process?
5. Can the commissioners of the Chester Sewer District take control over a privately-owned sewage system without giving the resident users an opportunity to vote in a referendum process?

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Each of your questions will be addressed separately, as follows.

Question 1

In response to your first question, this Office concurs with your conclusion that Chester County Council would not have absolute legislative authority over the special purpose districts. In particular, Section 4-9-80, Code of Laws of South Carolina (1984 Cum. Supp.) provides:

The provisions of this chapter [the Home Rule Act] shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly,

Dissolution of special purpose districts and certain changes in size or manner of appointment of the governing bodies of such districts are also provided for in Section 4-9-80, which section has been interpreted in Spartanburg Sanitary Sewer District v. City of Spartanburg, _____ S.C. _____, 321 S.E.2d 259 (1984). See also Section 6-11-410 et seq. of the Code, as to county council's role in enlarging, diminishing, or consolidating special purpose districts.

Furthermore, as you pointed out, the Supreme Court in Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983), stated that counties lack authority to abolish special purpose districts. Various applicable statutes and constitutional provisions discussed in Berry would also be applicable to the powers which Chester County Council may or may not have as to the Chester Sewer District and the Chester Metropolitan (water) District.

Question 2

You have advised that, by letter of August 12, 1985, the United States Department of Justice has advised that, at this

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time, the United States Attorney General does not interpose any objection to Act No. 1486 of 1968, in response to a request for preclearance under Section 5 of the Voting Rights Act of 1965, as amended. This Office assumes responsibility for submitting legislation enacted by the General Assembly to the Justice Department for such preclearance; because the act in question has been precleared, no further action by this Office is necessary at this time.

Question 3

The individual in question 3 is apparently serving as Town Clerk and as a member of the Town Council of the Town of Richburg and in an ex officio capacity on the commission of the Chester Metropolitan (water) District. While the question of dual office holding has been raised, the question may be resolved without reference to dual office holding prohibitions. For the reasons following, we concur with your conclusion that the individual cannot serve on the Chester Metropolitan District commission because he is a member of the Richburg Town Council.

Act No. 719 of 1971, in Section 1, provides the following as to appointment of District members:

The District shall be governed by a commission composed of nine members who are residents of the District. Three members shall be appointed by the Chester City Council, two members shall be appointed by the Great Falls City Council, one member shall be appointed by the Town Council of Fort Lawn, one member shall be appointed by the Town Council of Richburg, and two members shall be appointed by the Governor, upon the recommendation of a majority of the legislative delegation representing Chester County. Members of the commission shall not be members of the governing bodies by which they were appointed.

* * *

Appointment prescribed by this section shall be made prior to July 1, 1969, and the terms of office of members of the commission shall commence on that date. At the first

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meeting of the commission after its appointment it shall organize itself by electing one of the members as chairman and such other officers as it may consider necessary. Provided, however, that in the event any of the appointments be not made by the respective municipal councils the following officials shall hold office as members, ex officio, of the commission for the following periods or until their successors are appointed and qualify: The Clerk of the Town Council of Richburg, ... until July 1, 1971; After the above stated dates, if any respective municipal appointments shall not have been made, the officials mentioned above shall hold office as members, ex officio, of the commission until their successors are appointed and qualify. [Emphasis added.]

In the instant situation, even though the individual in question appears to be the Town Clerk of Richburg, 1/ the specific language of the first paragraph would prohibit his service on the District commission since he is a member of the governing body of the Town of Richburg. See also Bradley v. City of Greenville, 212 S.C. 389, 46 S.E.2d 291 (1948). Thus, we concur with your conclusion. The Town Council should therefore exercise its appointment power under Act No. 719 to appoint an individual not a member of the town's governing body (or other public officer) to serve on the District commission.

Questions 4 and 5

Your final two questions concern the extension of water and sewer services into an area previously not within the service area of the Chester Metropolitan (water) District and Chester

1/ See Section 5-7-180 of the Code, which provides that "[e]xcept where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected;" Section 5-7-220 (appointment of town clerk); Ops. Atty. Gen. dated March 14, 1983 (town clerk is an officer), January 31, 1984 (city council member is an officer), and May 21, 1984 (council member also a town employee).

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Sewer District. In particular, you have advised that privately-owned systems would be taken over by the Districts under a proposed plan, and you wish to know whether a referendum of the residents in the proposed service area would be necessary. Two aspects of such expansion must be considered.

The Chester Metropolitan (water) District is authorized by Act No. 478 of 1963, Section 4,

(e) To purchase or contract for the use of any water system or plant, or any part thereof, already existing, or being operated within the district, on such terms and at such price as the commission may deem proper, bearing in mind at all times the value thereof to the district's system or plant as a whole. [Emphasis added.]

Similarly, the Chester Sewer District is authorized by Act No. 1186 of 1964, Section 4 to "(10) Purchase or lease existing sewer lines, mains, systems, sewage disposal or treatment plants and to make contracts whereby they may be connected to the lines or systems which it may establish." It thus appears that each district may acquire other water or sewer systems, though the language of Act No. 478 of 1963 clearly restricts the Chester Metropolitan District to acquisition of systems within the District.

Acquisition of systems not already within the service area of either district will entail expansion of the service area of the given district. Because each of the districts was in existence prior to March 7, 1973, the procedures specified in Section 6-11-410 et seq., of the Code must also be followed. 2/ An opinion of this Office dated October 17, 1983, enclosed, summarizes these laws as follows:

§ 6-11-420 authorizes the governing body of the county to "enlarge, diminish, or consolidate any existing special purpose districts

2/ See Section 6-11-410 as to the definition of special purpose districts to which the laws concerning enlargement, diminishment, or consolidation of existing special purpose districts are applicable.

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located within such county" Thereafter, in § 6-11-430 et seq., the procedures which must be followed by the governing body of the county are enumerated. They include the notice of and holding of a public hearing. § 6-11-440 and § 6-11-450. Any action taken toward alteration of the boundary of the special purpose district must be reflected in the records of the county treasurer and auditor, § 6-11-460, and provision is made in § 6-11-470 for publication of the governing body's action. Any final action taken toward alteration of the boundary of the special purpose district may be challenged in court by "[a]ny person affected" § 6-11-480.

Please refer to the very detailed statutes for the complete requirements imposed upon a county council.

While the statutes relative to creating a special purpose district, Section 6-11-10 et seq., require an election by the qualified electors of the proposed district, see Section 6-11-60, there are no comparable provisions for a referendum in the expansion of water and sewer districts. If, however, general obligation bonds are to be issued, a county council may require a special election to be held. See Section 6-11-490. It should be noted that by Section 4-9-30(16), a county council is empowered "to conduct advisory referenda." Thus, while referenda would not be required prior to expansion of the service areas of water or sewer districts by a county council, council is certainly not prohibited from conducting such a referendum to ascertain the desires of the electors in the proposed service area in addition to holding the required public hearing.

Based on the foregoing, we concur with your conclusion that each district may obtain and operate water and sewer lines from a private-owned company but only if the proper statutory procedures required for expansion of the service areas of special purpose districts are followed. While referenda are not required for expansion, neither are they prohibited.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional information or

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clarification should be necessary.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions