

1981 WL 158145 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1981

*1 Felix L. Finley, Jr., Esquire
Pickens County Attorney
Post Office Box 543
Pickens, South Carolina 29671

Dear Mr. Finley:

In response to your request for an opinion from this Office regarding the Pickens County Water Authority, I agree with your conclusion that a serious question exists as to whether or not it was validly established inasmuch as the enabling legislation, Act No. 757 of 1973 [58 STAT. 1475 (1973)], was enacted after March 7, 1973, the effective date of the 'home rule' legislation. See, e.g., [Knight v. Salisbury](#), 206 S.E.2d 875 (1974); cf., [Kleckley v. Pulliam](#), 217 S.E.2d 217 (1977). Nevertheless, any authorized actions which its governing body has taken or will take prior to a successful court challenge to its constitutionality would be deemed valid as the actions of a de facto body. See generally, [State, ex rel. McLeod v. Court of Probate of Colleton County, et al.](#), 223 S.E.2d 166 (1975).

The Pickens County Council cannot re-enact by ordinance the provisions of Act No. 757 of 1973 until and unless a county-wide referendum conducted pursuant to [Article VIII, Section 16 of the South Carolina Constitution](#) approves the establishment of a county-operated water system. If that referendum does approve it and if the service area is less than the total unincorporated area of the county, another referendum must be held in the affected area pursuant to [Section 4-9-30\(5\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, before any taxes are levied therein at a rate different from the remainder of the county in order to provide water service. In any event, whatever method Pickens County selects to provide water service, it cannot create an autonomous body to provide for the service. Instead, any commission or other governing body can operate only as an agent of Pickens County.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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