

1981 WL 157812 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 10, 1981

***1 Re: Sea Pines Public Service District—Condemnation Authority**

Stephen P. Hughes, Esquire
Assistant County Attorney
Beaufort County
Post Office Box 40
Beaufort, South Carolina 29902

Dear Mr. Hughes:

You have asked whether or not the Sea Pines Public Service District may use its power of eminent domain to condemn private property outside its boundaries for the purpose of disposing of waste water. You have also inquired whether, if the answer to the first question is negative, the County of Beaufort may condemn the property for such purposes in the name of the Public Service District.

The Sea Pines Public Service District was created by Act 1158, Acts and Joint Resolutions (1964) to provide certain services deemed necessary by the General Assembly to protect the health of the rapidly increasing population of Hilton Head Island. Among its enumerated powers are building, constructing, and operating such waterworks, sewage facilities, and medical clinics found necessary by the governing Commission. In order to accomplish the objectives of the District the General Assembly also granted the governing commission the power of eminent domain. There is no question that, upon approval of the appropriate State and Federal Environmental Protection Agencies, the District could condemn private property within the boundaries of the District for disposal of waste water in the manner described in your letter. However, there is no statutory grant of jurisdiction or authority to the Commission for any purpose whatsoever beyond the boundaries of the District.

The General Assembly expressly granted municipalities some latitude in condemning property outside their corporate boundaries. Section 28-9-110, Code. By another statute, the Legislature granted private water companies all of the rights and powers possessed by municipalities relative to water service. [Section 58-7-30, Code](#). It logically follows that, if the Legislature had intended to grant to the Commission the power of eminent domain over property outside the boundaries of the District, it would have done so by express provision. Because the District is a creature of statute, it possesses only that authority expressly granted in the statute or that which is incidentally necessary for the exercising of expressly granted authority. [Richland County Department of Public Welfare v. Mickens, 246 S.C. 113, 142 S.E.2d 737 \(1965\)](#). Although condemning property outside the District boundaries might enhance or improve the operation of the District, it is not incidentally necessary for the operation of the District. It is, therefore, the opinion of this office that the Sea Pines Public Service District may not exercise the power of eminent domain outside its statutorily defined boundaries.

As to your second question, the only relevant limitation upon the exercise of eminent domain by Beaufort County is that the taking must be for a County purpose. [Section 4-9-30, Code](#). It is evident that the harm to the environment from pollution of the coastal waters and marshes presents a danger to inland residents of Beaufort County to almost as great a degree as those living within the Public Service District itself. The General Assembly obviously recognized this fact when it created the District to control sewage disposal and the distribution of drinking water, making a finding, in part, that:

***2** 'The development of recreational facilities and multi-unit accommodations, in the nature of inns, clubs, and apartment buildings, will make construction of a sewage disposal system a health necessity.' Act 1158, Section 2, Acts and Joint Resolutions (1964).

Having determined that the control of sewage disposal in the rapidly developing coastal zone of Beaufort County is a proper county function, it is the opinion of this office that Beaufort County may use its power of eminent domain to assist the Sea Pines Public Service District in the control of waste water.

I trust this has sufficiently answered your questions. If not, please feel free to contact us at your convenience.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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