



ALAN WILSON
ATTORNEY GENERAL

October 13, 2015

Mr. Will Martin, General Manager
Bamberg Board of Public Works
P.O. Box 1180
Bamberg, SC 29003-0780

Dear Mr. Martin:

Attorney General Alan Wilson has referred your letter dated June 8, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"Can the Bamberg Board of Public Works purchase, own and operate a golf course or a 'Country Club' which would include a golf course, pool and meeting facilities, etc.?"

Law/Analysis:

The Florida Supreme Court used a two-part test to determine whether a municipality could issue bonds to purchase a golf course. See City of Bradentown v. State, 88 Fla. 381, 102 So. 556, 36 A.L.R. 1297 (1924). The test implemented was: (1) was the action a permissible public purpose; and (2) who was the primary beneficiary. Id. Thus, we would recommend beginning with that test. First and foremost, does the City of Bamberg's Board of Public Works have the authority to make such a purchase and does it comply with its public purpose? Having a permissible public purpose is essential for two reasons: (1) because an entity can only act within the scope of its authority; and (2) because an entity may only tax for a valid public purpose. Id. This Office has previously opined that a golf course could be a valid public purpose. Op. S.C. Att'y Gen., 1984 WL 249909 (June 20, 1984) (citing Capen v. City of Portland, 228 P. 105, 35 A.L.R. 589 (Ore. 1924) etc.). This Office has also previously opined that in determining whether a board of public works may form a separate corporation to build a golf course, that the board's enabling legislation must authorize the creation of another corporation and that the building of a golf course must be within the course of business of the board in order to proceed. Op. S.C. Att'y Gen., 2007 WL 4686605 (December 17, 2007). However, your situation differs in that you are asking about purchasing an existing golf course.

As you are aware, a board of public works would be a creature of statute and thus only has that authority expressly conferred or necessarily implied from its enabling legislation and other applicable law for it to effectively fulfill the duties with which it is charged. Op. S.C. Atty. Gen., 2009 WL 276743 (January 7, 2009) (citing S.C. Coastal Conservation League v. South Carolina Dep't of Health & Env'tl. Control, 363 S.C. 67, 610 S.E.2d 482 (2005)). This Office has previously noted in an opinion that our State Supreme Court has held that "[a] board of public works is not a separate corporation but a mere municipal agency through whose management and control the General Assembly has required that the municipality shall operate and manage its waterworks." Op. S.C. Att'y Gen., 2008 WL 2324818 (May 30, 2008) (quoting Sossamon v. Greater Gaffney Metropolitan Utilities Area, 236 S.C. 173, 113 S.E.2d 534 (1960) (citing

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City of Union v. Sartor, 91 S.C. 248, 74 S.E. 496; City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361)). The 2008 opinion went on to state that:

An opinion of this Office dated May 5, 1966 determined that “a Board of Commissioners of Public Works and the governing body of a municipality are separate and distinct bodies; that the Board of Commissioners is given the full control and management of the municipal waterworks system, including the power to fix rates and determine the fiscal policies in connection therewith...” Boards of commissioners of public works are unique, hybrid entities - the CPW is an agency of the City, but it is also a distinct entity created by the Legislature and endowed by the Legislature with a limited corporate purpose. Pursuant to S.C. Code Section 5-31-210, the CPW consists of three elected commissioners, who exercise the powers granted by Section 5-31-250, above.

Op. S.C. Att’y Gen., 2008 WL 2324818 (May 30, 2008). Customarily, a municipal board of public works would have the power to “purchase, build or contract for building any waterworks or electric light plant authorized” pursuant to statute. S.C. Code § 5-31-250.¹ Any such municipal corporation is authorized to purchase a water supply to establish a sewer system. S.C. Code § 5-31-250. However, our Court has also noted that:

While furnishing water by a city to its inhabitants is now, although not formerly, regarded as a proper municipal function, a city waterworks system has also been characterized as of a commercial nature. Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 356. The Court there said:

‘While in this state it is settled that the operation of water works by a municipality is so far governmental in character as to absolve the corporation from liability sounding in tort (Black v. City of Columbia, 19 S.C. 412, 45 Am.Rep., 785), there can be no doubt that in the fiscal aspect thereof the operation and maintenance of such utility partake largely of the nature of a commercial or business enterprise. Indeed, by the great weight of authority in other jurisdictions the commercial nature of the enterprise is so far held to be controlling as to require the conclusion that the operation of a water works system is a function undertaken by a municipality in its private or proprietary capacity.’

23 Article 8, Section 5 of the Constitution authorizes cities and towns to acquire and operate waterworks systems and to furnish water to ‘individuals, firms and private corporations for a reasonable compensation.’

Sossamon v. Greater Gaffney Metro. Utilities Area, 236 S.C. 173, 181, 113 S.E.2d 534, 538 (1960). While it our understanding your Board of Public Works was created to serve the municipality of Bamberg, we also understand your Board must operate, as quoted above, “in the fiscal aspect thereof the operation and maintenance of such utility partake largely of the nature of a commercial or business enterprise.” Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 356 (citing 19 R.C.L. 764, § 69; 5 McQuillin on Municipal Corporations (2d Ed.) § 1962).

¹ For purposes of this opinion, we have not reviewed your Board’s enabling legislation or other authority.

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Conclusion: Under usual circumstances this Office believes a court would generally determine the purchase of a golf course is not within the traditional scope and legislative purpose of a board of public works. However, if the purchase of the golf course would further the board's work (i.e. additional sources of water and wastewater discharge fields) and fits within the legislative authorization, then we believe a court would uphold the purchase as within the purview of the board.² This Office believes the State and the political subdivisions thereof are becoming more acutely aware of the importance of having and maintaining an adequate water supply. Nevertheless, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. S.C. Code § 15-53-20. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² All other laws and regulations would need to be complied with, including any procurement policies or procedures.