

1978 WL 34647 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1978

*1 Mr. E. Penn Estabrook
208 Project Director
Lowcountry Council of Governments
Post Office Box 98
Yemassee, South Carolina 29945

Dear Mr. Estabrook:

In your letter of December 16, 1977, you requested clarification of two matters with respect to Act No. 397, S.C. ACTS, 1965. First you asked if the term 'district' as defined in § 2 of the Act applies to the Beaufort-Jasper Water Authority. In my opinion, the Beaufort-Jasper Water Authority is a 'district' as defined in the Act.

For purposes of that Act, codified as Title 6, Article 7 of the Code, a 'district' is defined as '. . . any special purpose or public service district now existing or hereafter created by an act of the General Assembly now or from time to time exercising the power to construct and operate sewer collection, disposal and treatment facilities.' § 6-11-1220(a), S.C. CODE, 1976. The Beaufort-Jasper County Water Authority, originally the Beaufort County Water Authority was created as a body corporate and politic by Act No. 784 of the S.C. ACTS, 1954. It was given the general powers of a special purpose district but given the name 'authority.' *Id.* In 1969, that Authority was given additional duties of providing for the collection, treatment, and disposal of sewage in any thickly populated areas of Beaufort County. Act. No. 598, S.C. ACTS, 1969. Finally in 1975, the Authority was given the function to construct and operate sewer collection, disposal, and treatment facilities within the district. § 1, 5, Act No. 349, S.C. ACTS, 1975.

The language of the 1975 Act cited above places the Beaufort-Jasper County Water Authority directly within the definition of 'district' as set out in the 1965 general act. The Authority itself is actually the 'commission' defined in the 1965 Act as the governing agency of the 'district.' However, the Beaufort-Jasper County Water Authority is a 'district' insofar as the 1965 Act defines a district.

Your second question asks whether the 1965 Act applies to authorities in general. In my opinion, the Act applies only to those public service districts whose governing agencies exercise the power to construct and operate sewer collection, disposal and treatment facilities. The name by which these districts or their governing agencies are called is not, in my opinion, relevant. The relevant considerations are first, whether it is a public purpose or public service district, and second, whether its governing authority has been given the power to construct and operate the specified sewer facilities. If both the above conditions are met, then the 1965 Act would apply to that authority.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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