

1978 S.C. Op. Atty. Gen. 159 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-127, 1978 WL 22595

Office of the Attorney General

State of South Carolina

Opinion No. 78-127

June 26, 1978

***1 SUBJECT: COUNTY GOVERNMENT: POLLUTION**

Initial Involvement of Counties in Providing Sewer Service Must Be Approved by the Voters in Accordance with the South Carolina Constitution.

TO: Charles Porter, Esquire
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QUESTIONS:

1. Is the authorization for counties to operate sewer facilities in [Section 44–55–1410 of the 1976 Code of Laws of South Carolina](#) subject to the requirement of a majority vote of the electors voting on the question in such county, as set forth in [Article VIII, Section 16, of the South Carolina Constitution](#)?
2. Is the above requirement applicable where a county receives a grant for sewer facilities and enters into a contract with a municipality, special purpose district, or other public agency for such agency to acquire, construct, operate and maintain the facilities in unincorporated areas?

STATUTES AND CASES:

[Article VIII, Section 16 S. C. Constitution \(1895\)](#); [Article I, Section 23, S. C. Constitution \(1895\)](#); [Section 44–15–1410, S. C. Code of Laws, 1976](#); [Knight v. Salisbury, 262 SC 565, 206 SE2d 875 \(1974\)](#); [Murphree v. Mottel, 267 SC 80, 226 SE2d 36 \(1976\)](#).

DISCUSSION:

[Article VIII, Section 16, of the South Carolina Constitution \(1895\)](#) states in pertinent part:

Any county or consolidated political subdivision created under this Constitution may, upon a majority vote of the electors voting on the question in such county or consolidated political subdivision, acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems or plants. [Emphasis added]

The Constitution specifically requires that there be a referendum vote before a county may acquire and operate, among other things, a sewer system. [Article I, Section 23, of the South Carolina Constitution \(1895\)](#) states, ‘the provisions of the Constitution shall be taken, deemed and construed to be mandatory.’ See [Murphree v. Mottel, 267 SC 80, 226 SE2d 36 \(1976\)](#). Therefore, the authorization for counties to acquire and operate sewer systems found in [Section 44–55–1410 of the 1976 Code of Laws of South Carolina](#), of course, must be subject to the requirements or restrictions of the Constitution noted above. See [Article I, Section 23, supra](#); [Knight v. Salisbury, 262 SC 565, 206 SE2d 875 \(1974\)](#).

[Section 44-55-1410](#) further provides that county governing bodies may contract with other persons, corporations, or various public entities to provide water and/or sewer services. Since the effect of [Article VIII, Section 16](#), in pertinent part, is to grant counties the authority to provide sewer service where no such authority previously existed, it appears certain that the referendum requirement of [Article VIII, Section 16](#), supra, would apply at the outset of county involvement in such services. Furthermore, that Constitutional requirement cannot be avoided by merely contracting with others to provide such services since it is the provision of sewer service in areas within the county which is authorized by the Constitution. Regardless of whether the county's initial involvement in the providing of such services is accomplished by direct acquisition or construction of facilities, by contract, or otherwise, it appears certain that it must initially be approved in each instance by the voters in an appropriate referendum. However, once the voters have approved the initial involvement of the county in the particular area, no subsequent referenda would be necessary.

CONCLUSION:

*2 Therefore, it is the opinion of this Office that the initial involvement of counties in providing sewer service must be approved by the voters in accordance with [Article VIII, Section 16, of the South Carolina Constitution \(1895\)](#).

Richard P. Wilson
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