



ALAN WILSON  
ATTORNEY GENERAL

April 03, 2019

The Honorable David R. Hiott  
Member  
South Carolina House of Representatives  
District No. 4  
411 Blatt Bldg.  
Columbia, SC 29201

Dear Representative Hiott:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states:

Local legislation established the Pickens County Water Authority in 1971 to provide water to areas of Pickens County not receiving water. The legislation states, "Its service area shall include all of Pickens County." A company is looking to establish operations in Pickens County and it needs water for its daily functions. The parcel upon which the company plans to locate is outside the city limits of Liberty, South Carolina. However, Liberty does have a water line extending from the city limits right near this parcel.

The Pickens County Water Authority wants to provide/meet the water needs of this company. However, in the Pickens County Water Authority's enabling legislation, it states in part, "...the Authority shall not unduly compete with publicly operated water systems of whatsoever nature in the county,...".

The question is whether Pickens County Water Authority can provide water to this company, even though it is outside Liberty's city limits, when Liberty has a water line running right by the parcel.

#### Law/Analysis

It is this Office's opinion that a court would likely find the Pickens County Water Authority (the "Authority") may provide water to a company which is located (1) within Pickens County, (2) outside of the corporate limits of a municipality, and (3) outside of an area served by a municipality as of the date of May 13, 1971; which is the effective date of the Authority's enabling legislation. In Pickens Cty. v. Pickens Cty. Water & Sewer Auth., 312 S.C. 218, 439 S.E.2d 840 (1994), the South Carolina Supreme Court held that subsequent local legislation was

unconstitutional and that 1971 Act No. 240 which created the Authority was revived. Therefore, this opinion will examine the text of Act No. 240 to ascertain what limits, if any, were placed on the Authority to provide water service within its service area.

In relevant part, Act No. 240 reads as follows:

**1971 Act No. 240- An Act To Create The Pickens County Water Authority, And To Provide A Penalty.**

Be it enacted by the General Assembly of the State of South Carolina:

**Section 1. Pickens County Water Authority created.**— There is hereby created a body corporate and politic to be known as the Pickens County Water Authority, hereinafter referred to as the “Authority.” Its service area shall include all of Pickens County. It shall be the function of the Authority to acquire supplies of fresh water, capable of being used for industrial and domestic purposes, and to distribute such water, in the manner herein provided, for industrial and domestic use within its service area. ...

**Section 6. Water not to be sold in certain areas.**--- To the end that the Authority shall not unduly compete with publically operated water systems of whatsoever nature in the county, the Authority shall not sell water to be used by persons or private corporations within the corporate limits of such municipalities or areas now served by municipalities without the consent of the duly elected officers, nor shall it sell water elsewhere than in Pickens County, such county being hereby defined to be the service area of the Authority.

Section 14. Time effective.--- This act shall take effect upon approval by the Governor.

Approved the 13<sup>th</sup> day of May, 1971.

Id. (emphasis added). This opinion will analyze 1971 Act No. 240 according to the principles of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute's language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The text of 1971 Act No. 240 appears to plainly demonstrate the General Assembly's intent regarding the Authority's service area and potential overlap with municipal water service.

Section one established that the Authority's service area includes all of Pickens County. Section six carved out territory within Pickens County where the Authority may only operate with consent. When read in isolation, the language "the Authority shall not unduly compete with publically operated water systems of whatsoever nature in the county" would suggest to a reader that the Authority lacks authorization to operate anywhere that a publically operated system is available to provide service. However, when read with the beginning of the sentence which states "to the end that," it is clear that this phrase is merely a preamble to the General Assembly's intended restriction. Id. The plain language of the statute states the restriction on the Authority is limited to areas "within the corporate limits of such municipalities or areas now served by municipalities." Id. The restriction on areas "now served by municipalities" demonstrates legislative intent to fix these geographic limitations on the Authority's service area only to those existing at the time the legislation was adopted. Therefore, it is this Office's opinion that a court is likely to find that the Authority is authorized to distribute water within Pickens County to any areas that are not encompassed by the corporate limits of a municipality and that were not provided water service by a municipality as of May 13, 1971, the effective date of the legislation.

### Conclusion

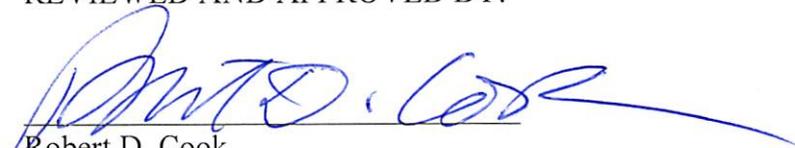
It is this Office's opinion that a court would likely find the Pickens County Water Authority (the "Authority") may provide water to a company which is located (1) within Pickens County, (2) outside of the corporate limits of a municipality, and (3) outside of an area served by a municipality as of the date of May 13, 1971; which is the effective date of the Authority's enabling legislation.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General