

1973 WL 26620 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 16, 1973

*1 The Honorable Eugene C. Stoddard
Member
House of Representatives
Laurens County
Route 3
Gray Court, South Carolina 29645

Dear Mr. Stoddard:

You have recently inquired as to the relative powers, duties, functions and limitations with respect to the Rabon Creek Rural Water District (72 Acts 3647) and the Laurens County Water Resources Commission (72 Acts 3754). The latter Act was approved by the Governor approximately one week after the enactment of the former. Section 1 of the Act creating the Rabon Creek Rural Water District recites that the principal function of the district is to:

—acquire and furnish supplies of fresh water for retail use capable of being used for industrial and domestic purposes—.

—construct and operate reservoirs—water treatment facilities—.

The concluding portion of Section 1 recites:

‘Provided that such treated water is unattainable from existing authorities, commissions, companies and municipalities at reasonable terms and sites.’

Section 7, which vests in the Water District specific powers, includes therein the power:

(7) To build, etc., dams—build, construct, maintain and operate water treatment facilities, provided such treated water is unattainable from existing authorities, commissions, companies and municipalities at reasonable terms and sites.

(8) To build—facilities for the distribution of water at retail rates for domestic or industrial use—.

The Act creating the Laurens County Water Resources Commission recites, in Section 1 thereof, that the Commission: may acquire supplies of fresh water capable of being used for industrial, agricultural and domestic purposes, and to distribute such water at wholesale to municipalities, water districts and other public service companies in the manner herein provided for industrial, agricultural and domestic use—.

The Legislature was undoubtedly aware of the existence and powers of the Rabon Creek Rural Water District when it created the Laurens County Water Resources Commission a few days after the creation of the former district. This is shown by Section 4 of the Act relation of the Laurens County Water Resources Commission which provides that its governing body shall include a representative from the Rabon Creek Rural Water District. The service areas of the two overlap to some extent but they serve different purposes. One provides water at retail and the other provides water at wholesale and, in addition, the Laurens County Water Resources Commission may provide sewer services.

Your question relates to the meaning to be given to the provisos inserted in Sections 1 and 7 of the Act creating the Rabon Creek Rural Water District and which are underscored above. There is some confusion with respect to the use of the phrase in the provisos which refers to ‘such treated water,’ in that there is no prior reference in the Act to treated or untreated water although both Acts used the phrase, ‘water capable of being used,’ and each Act vests in the districts the authority to build and operate water treatment facilities.

*2 It is my opinion that the powers vested in the Rabon Creek Rural Water District specifically by Section 7(7) are contingent upon the unavailability of treated water from existing authorities, commissions, companies and municipalities at reasonable terms and sites. This subsection authorizes the district to ‘build, construct, maintain and operate canals—dams and water reservoirs, impound fresh water in lakes and reservoirs, build, construct, maintain and operate water treatment facilities, provided (such) treated water is unattainable from existing authorities—.’ The condition of the provisos must be met before the recited powers may be exercised.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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