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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 7, 1998

The Honorable T. Scott Beck
Member, House of Representatives
22 Rapids Court
North Augusta, South Carolina 29841

Re: Informal Opinion

Dear Representative Beck:

Your opinion request has been forwarded to me for reply. You have informed this Office that Mr. Edwin Sanders has attempted to obtain a copy of Budget and Control Board Report #2 relating to the New Ellenton Sewer System through the Freedom of Information Act (hereinafter "FOIA"). You have also informed this Office that legal counsel for the Budget and Control Board contends that this document is protected by the attorney-client privilege, as well as the work product doctrine. You have asked whether this document is protected by the FOIA.

The FOIA provides that any person has a right to inspect or copy any public record of a public body, except those matters exempt from disclosure under Section 30-4-40 of the Code. S.C. Code Ann. § 30-4-30(a). One of the exemptions found in Section 30-4-40 is for correspondence or work products of legal counsel for a public body and any other material that would violate the attorney-client relationship. S.C. Code Ann. § 30-4-40(a)(7).

It is my understanding that this document, along with other documents and the individuals who prepared them, were subpoenaed by the plaintiff in a civil case captioned Louis Whitlaw v. John W. Harte, Esq. et al., C/A No. 96-CP-02-810. Counsel for the Budget and Control Board objected to the subpoenas and subpoenas duces tecum on the grounds that the individuals performed investigative work for legal counsel of the Budget and Control Board in preparation for advising the Budget and Control Board on litigation

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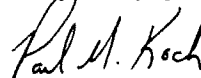
matters, and that their notes, interviews, and reports constituted attorney work product. In an Order dated November 20, 1997, Judge L. Casey Manning concluded that the investigative notes of these individuals, any tapes or documents related to interviews they conducted, their conclusions, mental impressions and investigative reports are subject to absolute immunity under the attorney work product privilege. He therefore quashed the subpoenas and subpoenas duces tecum.

I have been informed that Budget and Control Board Report #2 relating to the New Ellenton Sewer System was one of the documents that Judge Manning found to be subject to absolute immunity under the attorney work product privilege in the context of the above referenced civil case. Therefore, it is most likely that if a court were asked to make the same determination under the FOIA, it would determine that this document is attorney work product and, thus, exempt from disclosure under the FOIA.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General