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The State of South Carolina C. #1551 4-1551



Office of the Attorney General

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April 8, 1985 April 8, 1985

The Honorable G. Ralph Davenport, Jr.
Member, House of Representatives
312-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Davenport:

You have requested the opinion of the Attorney General on the following questions:

1. Base compensation and the setting of salaries for Una Water District Commission.
2. The proper recording procedure for the payment of per diem and mileage for auditing purposes.
3. Should minutes be kept of all meetings of the Una Water District Commission, formal or informal.
4. Under the Special Purpose District Legislation set in 1955 can they change the name of the district?

Each of your questions will be addressed separately, as follows.

Question 1 Question 1

The Una Water District was created by Act No. 582, 1955. 582, 1955 Acts and Joint Resolutions. This Office has not identified identified provisions in that act or in any act amending Act No. 582 to No. 582 to provide for compensation of the Commissioners of the District. However, Act No. 817, 1978 Acts and Joint Resolutions, appears, appears

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to be applicable. That act provides that provides:

Notwithstanding any other provision of law, any water district in Spartanburg County which has not provided compensation for its commissioners may pay them twenty dollars per day for each meeting attended on behalf of the district's business, but no commissioner shall receive more than twelve hundred dollars during any one year. 1/

Because no act of the General Assembly has set compensation for Una Water District Commissioners, Act No. 817 of 1978 could be followed to determine their compensation.

Section 6-11-91, Code of Laws of South Carolina (1984 Cum. Supp.), provides an alternative should the Commissioners choose to adopt it:

Notwithstanding any other provision of law the governing body of any public service district or special purpose district may by resolution or ordinance fix or change the compensation or other benefits including insurance benefits for the members of the district governing body. Compensation shall not exceed the amounts authorized for mileage for members of state boards, committees and commissions, insurance benefits shall not exceed those provided for state employees and per diem shall not exceed thirty-five dollars a day.

This Office has interpreted Section 6-11-91 in an opinion dated February 18, 1981; it should be noted therein that the terms "compensation" and "per diem" mean the same thing and that a

1/While constitutionality of an act of the General Assembly is presumed unless or until a court declares otherwise, otherwise it must be noted that there is a question as to the constitutionality of this Act. Article VIII, Section 7 of the State Constitution provides that "[n]o laws for a specific county shall be enacted to..." Because this Act is one for a specific county, a court deciding the issue could find it to be unconstitutional.

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commissioner would be limited to compensation of per diem of per diem of thirty-five (\$35.00) dollars per day under this section this section.

Section 6-11-92 of the Code must also be considered. That section provides: County shall not provide compensation for its commissioners any day.

Any public service district or special or special purpose districts operating on the effective date of §§ 6-11-91 through 6-11-93 may continue to use the compensation or benefit plan now in existence on the effective date of §§ 6-11-91 through 6-11-93.

The effective date of Sections 6-11-91 through 6-11-93 was June 16, 1980. Act No. 817 of 1978 was in effect on that date; thus, the compensation plan under that Act may be continued if the Commissioners so choose. There is no provision of law which would permit the Commissioners to determine compensation under both Act No. 817 of 1978 and Section 6-11-91 of the Code; the Commissioners must choose either the Act or section of the Code to determine their compensation. See Op. Atty. Gen. dated January 23, 1985, enclosed.

Commissioners may also be reimbursed for mileage at the same rate paid to members of state boards, committees, and commissions; further, insurance benefits, not to exceed those provided to state employees, may also be provided for the Commissioners, according to Section 6-11-91. These benefits would be in addition to compensation, paid according to either Act No. 817 of 1978 or Section 6-11-91 of the Code.

Question 2

You have asked our opinion on the proper recording procedures for payment of per diem and mileage for auditing purposes. No provision of state law governs this inquiry. You may wish to confer with an accountant or an auditor familiar with accounting principles and auditing standards (GAAP and GAAS) to determine preferable methods to keep these records.

Question 3

Whether minutes should be kept of all meetings, formal and informal, of the Una Water District Commission is your third inquiry. This question is addressed by a provision of the

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Freedom of Information Act, Section 30-4-90 of the Code, which Code, which provides in relevant part (b) (3) (B) dollars per day, under this

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.

* * *

Under the definition of "public body" in Section 30-4-20(a), the Una Water District would be subject to the Freedom of Information Act; thus, under Section 30-4-90, minutes must be kept of all public meetings of that body. The Act does not distinguish between "formal" and "informal" meetings; if the meeting is a public one, 2/ minutes must be kept.

2/Section 30-4-60 of the Code states that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." Section 30-4-70 contains provisions for executive session and administrative briefing.

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Question 4 Question 4 Product of De Facto Law, Section 30-4-50 of

Finally, you have asked whether, under the, Special Purposeial Purpo District Legislation sets int 1955, "they" can change the name of the name the district. Ifs byi "they" if you are referring to the the Commissioners, it would appear that the Commissioners were notrs were no granted this power under the act creating the District, Act Noict, Act N 582 of 1955582 of 1955.

If the General Assembly wished to authorize such a name change, it would be preferable to enact a general law to allow such name changes to be made. As noted in our first footnote, the State Constitution prohibits the enactment of a law for a specific county. See Article VIII, Section 7. This provision would preclude an act specifically for the water district or for Spartanburg County. We would advise that we have examined no proposed legislation and herein intend merely to comment on the concept of such legislation.

We trust that the foregoing has responded to your inquiries. Please advise if we may provide additional assistance to you.

Sincerely,

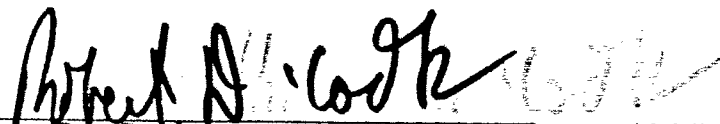
Patricia D. Petway

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Enclosures

REVIEWED AND APPROVED BY:


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