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April 30, 1987

C. H. McGlothlin, Jr.
General Counsel
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461-0398

Dear Mr. McGlothlin:

You have requested an opinion as to whether the revenues of the South Carolina Public Service Authority (hereinafter "the Authority") are subject to appropriation by the General Assembly. Specifically, your inquiry concerns the legal validity of a provision in the General Appropriation Bill for 1987-88 (H.2590) which provides that the Authority must remit annually four million dollars to the State General Fund beginning in Fiscal Year 1987-88, to the extent that this funding requirement does not violate the provisions of any indentures relative to bonds." Part II, § 9, General Appropriations Bill for 1987-88. It is our opinion that the General Assembly may not lawfully direct the Authority to remit any stated sum of money in this manner.

The Authority is a quasi-municipal corporation exercising certain functions as an agency of the State of South Carolina. Rice Hope Plantation v. South Carolina Public Service Authority, 216 S.C. 500, 59 S.E. 2d 132, 138 (1950). A Board of Directors was created and given certain powers by the General Assembly. §§ 58-31-10, 30, S.C. CODE, 1976 (as amended). One of its powers was to collect rates and other revenues sufficient to meet its expenses and costs of operation. § 58-31-30(13), supra. Provision was then made that all net earnings thereof not necessary or desirable for the prudent conduct and operation of its business or to pay the principle and interest on its bonds, notes, or other evidences of indebtedness...shall be paid over semi-annually to the State Treasurer for the general funds of the State...." § 58-31-110, supra. The Supreme Court has held that this section, along with the remainder of the enabling act, "clearly contemplates the exercise of discretion by [the Board of Directors]...." South Carolina Electric and Gas Company v. South

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Carolina Public Service Authority, 215 S.C. 193, 54 S.E. 2d 777, 785 (1949). The General Assembly has provided specifically that "[t]he Board of Directors shall have full authority to manage the business of the Public Service Authority, and to prescribe ... bylaws, rules and regulations governing the manner in which ... the powers granted to it may be exercised and embodied." § 58-31-60, supra. The Court has held that it "will not interfere with such discretionary powers ... except in cases of fraud or clear abuse of power or where unreasonable or capricious." South Carolina Electric and Gas Company, Supra at 212, 54 S.E. 2d at 785.

The question then arises whether the General Assembly may restrict that discretion of the Board by now directing the Board to remit a stated sum of money from its revenues to the General Fund pursuant to § 58-31-110, supra. Clearly it cannot lawfully direct the Authority to remit any sum of money that would violate the terms of a trust indenture relative to bonds. §§ 58-31-70, 150, supra. The section in the Appropriation Bill at issue here recognizes that limitation in that it provides that the remittance shall be made only "to the extent that it does not violate the provisions of any indentures relative to bonds." supra.

The question remains whether the General Assembly may direct the Authority to remit a stated sum of money if that remittance does not violate any provision of a trust indenture or other agreement. As a matter of general law, the funds of the Authority acquired in the course of business would most probably be considered trust funds maintained by the Authority for the benefit of the persons served by the Authority and as such they could not then be diverted for other purposes. 2 McQuillin, Municipal Corporations, § 4.410; Shirk v. Lancaster, 169 A.557, 90 ALR 688 (Pa. 1933). In that event, the General Assembly would be restricted by Article I, § 4, South Carolina Constitution, which prohibits any law impairing the obligation of contracts, and could not lawfully direct the Authority to make a payment of a specified amount into the General Fund in that it would invade the prerogative of the Board of Directors in their capacity as trustees. Of course, the Board of Directors would nonetheless be required to pay over to the General Fund "all net earnings thereof not necessary or desirable for the prudent conduct and operation of its business...or otherwise necessary to meet its debt obligations." § 58-31-110, supra. But the determination of that amount to be so paid would appear to be entrusted to the Directors in their fiduciary capacity. As an additional matter, if the General Assembly were intending, by this provision, to determine the specific amount of "net earnings thereof not necessary or desirable for the prudent conduct and operation of [the Authority's] business...." and therefore in effect adjudicate a claim by the State against the Authority pursuant to § 58-31-110, supra, it most probably would not be permitted under the doctrine of separation of powers to determine the specific

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amount of such an obligation owed by the Authority pursuant to § 58-31-110, supra., in that such a determination would be a judicial function. McQUILLIN, MUNICIPAL CORPORATIONS, § 4.187, citing State v. Hampton, 13 Nev. 439. Such a determination would most probably be prohibited by Article I § 8 of the South Carolina Constitution. See Carolina Glass Company v. State, 87 S.C. 270 69 S.E. 391, 198 (1910); Segars v. Parrott, 54 S.C. 1, 31 S.E. 677, 682 (1898).

For all the foregoing reasons it is our opinion that the General Assembly may not lawfully direct the Public Service Authority to pay over a stated sum of money to the General Fund as provided in the Appropriation Bill. The Authority remains obligated however to pay over to the State Treasurer such amounts which are determined in the discretion of the Board of Directors to be "not necessary or desirable for the prudent conduct and operation of its business ..." or otherwise needed to meet its lawful obligations.

Sincerely yours,



David C. Eckstrom
Assistant Attorney General

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Reviewed and Approved By:



Robert D. Cook
Executive Assistant for Opinions

¹ We do not address the question whether this provision in the Appropriations Act constitutes an "appropriation" which may properly be included in an appropriations act. See Cox v. Bates, 237, S.C. 198, 110 S.E. 2d 828, 834 (1960).