

# The State of South Carolina



## Office of the Attorney General

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March 24, 1987

The Honorable T. Ed Garrison  
Senator, District No. 3  
412 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Garrison:

As we advised by our letter of February 25, 1987, we sought and have received a well-researched memorandum from Michael F. Mullinax, attorney for the Homeland Park Water District, with respect to the first two questions detailed in the letter of February 25. After independently researching the issues, we offer the following as to these remaining issues.

### Question 1

Does the District have the authority to loan \$1.8 million to the City of Anderson, at eight percent interest for twenty years, without a referendum in the District?

From materials provided to this Office, we observe that the City of Anderson and Homeland Park Water District have contracted, pursuant to authority granted by Section 16 of Act No. 1101 of 1950, for the City of Anderson to handle the sewage disposal of the District, for the considerations specified and at the expense of the District. The memorandum supplied by Mr. Mullinax provides ample support for the District to loan funds to the City of Anderson to upgrade and expand the sewage treatment services of the City which are utilized by the District. See also Section 6-15-20 of the Code (governmental entities authorized to contract with other governmental entities for collection, disposal, and treatment of sewage and inter alia may improve such facilities); Op. Atty. Gen. dated February 18, 1986 (enclosed).

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According to information provided by Mr. Mullinax, the source of funding has not yet been determined, though several different methods or resources are being considered. Whether a referendum must be held depends upon the source of funding; without that additional information, our response must necessarily be speculative. For example, if general obligation bonds are issued, the County Bond Act must be followed, pursuant to Section 6-15-130; in that instance, Section 4-15-30 et seq. of the County Bond Act would require a successful referendum. If revenue bonds should be issued, Section 6-11-890 of the Code would permit but not require a referendum to be held.

Section 6-15-60 of the Code of Laws of South Carolina (1986 Cum. Supp.) provides the following with respect to imposition of charges for sewer service by a governmental entity such as the District:

The General Assembly confirms the right of any governmental entity to impose upon all those to whom sewer service is rendered, (a) a sewer service charge therefor, which may, in the discretion of its governing body, be sufficient to provide for all or any part of the cost of operating and maintaining the sewer facilities and to provide debt service on bonds or other obligations of the governmental entity issued to provide any type of sewer collection, disposal, or treatment service, and (b) a sewer connection charge, or connection fee or tapping fee designed to adequately reimburse the governing body for effecting the connection to provide sewer service.

Thus, a service charge sufficient to cover the costs of operating and maintaining sewer facilities may be imposed upon recipients of those services. Charges may be imposed also to provide debt service on obligations of the governmental entity. If this approach should be taken to fund the loan, the section does not require a referendum to be held.

The foregoing three examples of how the loan may be funded are not meant to be exclusive or limiting; it must be acknowledged that other sources of funding, with other requirements relative to holding a referendum, are available and may be utilized. Thus, no conclusion can be reached at this time as to the necessity of a referendum.

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Question 2

Does the District have authority to require some, but not all, property owners wishing to be served by the District to annex into the District and become subject to taxation prior to being served by the District?

Annexation of territory into a special purpose district such as Homeland Park Water District is achieved by following Section 6-11-410 et seq. of the Code. Mr. Mullinax has advised that each time the territory of the District has been expanded, these Code provisions have been followed.

As Mr. Mullinax points out in his letter, Section 6-11-110 of the Code permits special purpose districts to provide services outside their districts and to charge whatever rates as may be fixed by the commissioners of the district, which rates may be more, but not less, than rates charged to service recipients within the district. Section 6-11-140 permits revision of the rates from time to time, as may be necessary. In this regard, it appears that some property owners adjacent to the District have been required to annex into the District prior to receiving services, while services have been rendered to other property owners without requiring annexation.

A similar issue, requiring certain property owners to annex into a municipality before receiving fire protection services from the municipality, was addressed in an opinion of this Office dated December 22, 1986, a copy of which is enclosed. The reasoning in that opinion is applicable in this instance. The governmental entity (such as the District) has discretion in providing extra-territorial services. While, as stated in the previous opinion, only a court could determine with finality the validity of a policy requiring annexation to a governmental entity (city, county, special purpose district) prior to receiving services, such a policy could be upheld as constitutional.

The various means by which the District's governing body has determined what costs or fees or other charges may be imposed on an extra-territorial customer are outlined in Mr. Mullinax's letter on page 3. As noted, Section 6-11-140 permits these rates or charges to be revised from time to time. Only a court would have the authority to say that such fees or charges were or are invalid.

We hope that the foregoing has satisfactorily responded to your constituent's inquiries. Enclosed herewith is a copy of

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Mr. Mullinax's letter which has been referred to several times,  
above, for your convenience.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

cc: Michael F. Mullinax, Esquire  
Mr. Lucky Evans