



ALAN WILSON
ATTORNEY GENERAL

July 03, 2025

The Honorable Richard Cash
Member
South Carolina Senate
P.O. Box 8002
Anderson, SC 29622

The Honorable Don Chapman
Member
South Carolina House of Representatives

The Honorable Lee Gilreath
Member
South Carolina House of Representatives

Dear Senator Cash and Representatives Chapman and Gilreath:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

We are writing today to seek an opinion about public service water districts organized under the provisions of S.C. Code § 33-36-1310.

It has been brought to our attention that a number of the public service water districts in Anderson County prohibit a developer from using a licensed water utility contractor of their choice to perform work. Instead, when a developer needs a new line run, many of the water districts have a policy of contracting directly with a utility contractor using a bid process that is limited to those contractors who are on the water districts' approved list. Then, the developer is responsible for paying whichever utility contractor is selected by the water district.

The complaint we have received about limiting a developer's contracting ability is that the cost of the work is much higher when the water district puts the work out for bid to contractors on its approved list. Also, there are times when a developer is also a licensed water utility contractor but cannot meet all the requirements to get

on an approved list and therefore cannot do the work on his own property. Enclosed is an example of what a contractor must do to try to get on the approved list.

We understand the high priority that public service water districts must place on maintaining a safe and reliable system. However, we seek an opinion of whether it is legal for a public service water district to prohibit a developer from contracting with a licensed water utility contractor to perform work and instead mandating that the district contract with a licensed utility contractor using a bid process limited to contractors that are on the water districts' "approved list."

Law/Analysis

Your letter states that several service water districts were formed under the provisions of S.C. Code § 33-36-1310 which authorizes a nonprofit corporation incorporated for the purposes of providing water or water and sewer services to become a public service district. S.C. Code § 33-33-1360 within the same article lists the rights and powers of such a district. These rights and powers include the power to:

(16) authorize the construction, operation, maintenance of any project by any person, firm, or corporation, including political subdivisions and agencies of any state of the United States;

(17) apply to the appropriate agencies of the State, the United States or any state, and to any other proper agency for and obtain from them permits, licenses, certificates, or approvals as may be necessary; and construct, maintain, and operate the project in accordance with such license, permits, certificates, or approvals;

Id. This Office cannot find facts in an opinion, but will assume the facts presented for purposes of analysis. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions."). In order to provide guidance, this opinion will assume the enclosed contractor qualifications are broadly representative of the qualifications the water districts have imposed for inclusion on the approved contractor lists. Those qualifications include: a South Carolina Contractor's License, qualification statement of company, evidence of authority to do business in the State of South Carolina, proof that Contractor can provide limits of liability insurance coverage, proof that Contractor can provide a 100% performance bond, proof that Contractor can provide a 100% payment bond, list of primary subcontractors, and a list of primary material suppliers. Additionally, the form asks for a list of references and a list of water

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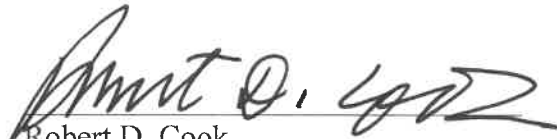
distribution projects completed within the last five years. Assuming arguendo that these requirements are called for by or related to compliance with permits, licenses, certificates, or approvals from agencies of the State, the United States or any state, or other proper agency, S.C. Code § 33-36-1360(A)(17) may well require such districts to confirm these qualifications.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General