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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

January 20, 2004

The Honorable Harry C. Stille  
Member, House of Representatives  
436-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Stille:

In a letter to this office you referenced a prior opinion of this office dated July 31, 2003 which dealt with numerous questions regarding the Donalds-Due West Water Authority. That opinion was unable to conclude with certainty whether the Authority was a single county or multi-county entity. You have asserted that inasmuch as the legislation establishing the Authority included portions of Greenwood County, the Authority is a multi-county Authority. You have questioned whether the Abbeville County Legislative Delegation has the authority under a multi-county water district to recommend or appoint members of the Authority Board. Presently, pursuant to Act No. 776 of 1976 successors to a member of the Authority Board shall be appointed by the Governor based on recommendations as set forth in the Act.

As indicated in the prior opinion noted above, good arguments may be made that the Authority is a multi-county entity. While only a court could resolve the issue with finality, the General Assembly could arguably enable the legislative delegation to recommend or appoint members of the Board. As noted in the prior July 31, 2003 opinion,

if the defined service area of the Authority includes multiple counties and the changes are made through legislative action or amendment to the Authority's enabling legislation, then the General Assembly would have plenary power to determine who should make the recommendations for appointment to the Governor. The General Assembly could determine that the relevant legislative delegations, county councils, city/town councils or any combination thereof is/are the appropriate group(s) to make the recommendation. The General Assembly could express this determination through a specific provision in any law passed in this matter.

Such legislation would be presumed valid and would remain in force until a court would rule otherwise. As noted by the State Supreme Court in State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956), the powers of the General Assembly are plenary and it may enact such legislation as is not expressly or by clear implication prohibited by the State Constitution. As a

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result, any act of the General Assembly would be presumed valid and constitutional and would not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939).

Therefore, good arguments exist that the Authority is a multi-county entity. Legislation could be sought which would enable the legislative delegation to make recommendations or appointments to the Authority. Such authority would remain in force and be effective until a court would rule otherwise.

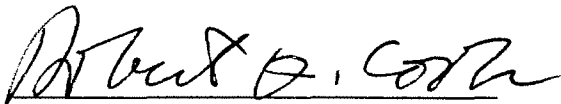
Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General