ALAN WILSON
ATTORNEY GENERAL

January 25, 2012

The Honorable Ralph W. Norman
Representative, District No. 48
P.O. Box 36518
Rock Hill, South Carolina 29732

Dear Representative Norman:

Thank you for your inquiry concerning the proper body to govern the affairs of the water and sewer system of the City of Tega Cay.

It appears from the ordinances provided to this Office in connection with your request that a referendum was held in 1997 on the question of whether the City of Tega Cay should "be authorized to construct, acquire, operate and maintain a waterworks and sewer system." Tega Cay Ordinance No. 147 (Aug. 18, 1997) (calling for the referendum); Tega Cay Ordinance No. 172 (Jan. 26, 2000) (reciting that the referendum resulted in a vote of 718-90 in favor of authorizing the water and sewer system). Then, in 2000, the city enacted an ordinance authorizing the issue of revenue bonds to fund the cost of constructing such system. It does not appear an election was held on the question of whether the city should issue these bonds. *See* Tega Cay Ordinance No. 172; Tega Cay Ordinance No. 173 (Jan. 26, 2000) (authorizing up to $775,000 in revenue bonds).

Presently, the City of Tega Cay does not have a board of commissioners of public works. Rather, its water and sewer system is managed by city council.

Law/Analysis

Section 5-31-610 of the South Carolina Code (2004) provides:

> A city or town may:
>
> (1) Construct, purchase, operate and maintain waterworks and electric light works within or without, partially within and partially without, their corporate limits for the use and benefit of such city or town and the inhabitants thereof;
>
> . . . .

> (3) Acquire existing waterworks by condemnation;
>
> (4) Contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all, for the use of such cities and towns, and the inhabitants thereof; and
>
> (5) Sell, convey and dispose of any and all such properties . . . .

Section 5-31-210 provides, in relevant part:

> At any election for bonds held to meet the costs of acquiring property of the character referred to in § 5-31-610 the elector shall vote for three citizens of the city or town . . . . The officers so elected and their successors in office shall be known as the commissioners of public works of such municipality and by that name may sue and be sued in any of the courts of this State.

(Emphasis added). This board of commissioners, pursuant to section 5-31-250, "may purchase, build or contract for building any waterworks or electric light plant . . . and may operate them and shall have full control and management of them."

Section 5-31-210 originally was part of an act that included the predecessor to section 5-31-610 along with an authorization to issue bonds for the purposes listed therein. Act No. 39, 1896 S.C. Acts 83. As an expressly "additional and alternative method"[1] for funding municipal public works, the Revenue Bond Act for Utilities [hereinafter, the Revenue Bond Act], authorized municipalities to issue revenue bonds "without submitting the proposition for the approval of them to the voters of the borrower." S.C. Code Ann. § 6-21-530 (emphasis added); *see generally id.* § 6-21-10 (defining "borrower" as "the municipality operating under this chapter"). Municipalities do not run afoul of the South Carolina Constitution by taking advantage of this authorization.[2]

---

[1] S.C. Code Ann. § 6-21-560 (2004); *Acker v. Cooley*, 177 S.C. 144, 181 S.E. 10, 11 (1934) (the Revenue Bond Act for Utilities is, "by its express terms . . . an alternative procedure to that required by other statutes").

[2] S.C. Const. art. X, § 14(10) ("Indebtedness payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the General Assembly may prescribe by general law . . . ."); S.C. Code Ann. § 11-27-40(7) (2011) ("All laws now in force permitting any political subdivisions to incur indebtedness (and to issue bonds or other evidences of debt) which shall be payable solely from a revenue-producing project or from a special source . . . shall continue in force and effect after the ratification date [of article X of the South Carolina Constitution]."); *Park v. Greenwood County*, 174 S.C. 35, 176 S.E. 870, 873 (1934) (holding revenue bonds were "not debts in a constitutional sense"); R.T.K., Annotation, *Constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness*, 146 A.L.R. 604 (1943) ("In the great majority of cases involving the question, the courts have held that if the issuance . . . of bonds or other instruments does not give rise to an 'indebtedness' or 'liability,' within the meaning of an organic debt limitation, such obligations are not

Clearly, municipalities proceeding under the Revenue Bond Act must comply with the constitutional requirement of a referendum on the question of whether to acquire a utility system. *Murphree v. Mottel*, 267 S.C. 80, 86, 226 S.E.2d 36, 38 (1976) ("The Revenue Bond Act must now be viewed as having been amended to the extent that counties are now required to satisfy the election requirements of Art. VIII, s 16, prior to their acquisition of certain municipal public works.").[3] However, no referendum is required as to the question of whether to issue revenue bonds to fund this acquisition. *Cornelius v. Oconee County*, 369 S.C. 531, 537, 633 S.E.2d 492, 495 (2006) ("[N]othing in Article VIII, § 16 requires that the referendum be phrased to restrict the sources of funding a county may use . . . ."); Letter to Charles Porter, Op. S.C. Att'y Gen. No. 78-127 (June 26, 1978) (opining that a county must obtain voter approval prior to providing sewer service even if the sewer facilities will be funded by grant, but that "once the voters have approved the initial involvement of the county in the particular area, no subsequent referenda would be necessary.").

The plain language of section 5-31-210 appears to make the election of a board of commissioners of public works contingent upon the occurrence of an "election for bonds." This plain language permits a municipality to avoid the creation of such board by funding its public works with revenue bonds and choosing not to hold an election on the question of whether to issue such bonds. We can find no statutory or constitutional reason to vary from this plain language, which has been a part of the relevant statutory scheme since it first was enacted in 1896 and has remained despite a substantial restructuring of that scheme in the 1952 Code. In this regard, it is worthy of note that the language tying the election of the board to an election on bonds did not change after an 1899 amendment gave municipalities a choice concerning whether to use bonds to pay for the enumerated works. *Compare* Act No. 39, 1896 S.C. Acts 83, § 1 (providing, in relevant part, "to meet the cost of the same the said cities and towns shall issue coupon bonds"), *with* Act No. 33, 1899 S.C. Acts 49 (striking the word "shall" in the above-quoted text and substituting the word "may").

It is true—as you note in your letter—that Tega Cay currently is not listed in section 5-31-230 of the South Carolina Code (2004 & Supp. 2010) among the cities and towns in which there "shall be no board

---

affected by provisions in the constitutions or statutes requiring the approval of the electors or taxpayers . . . and that such obligations need not be authorized or approved by the voters."); *cf. Painter v. West*, 261 S.C. 277, 284, 199 S.E.2d 538, 540 (1973) ("Our prior decisions make it clear that the 'debt or obligation' which must be approved by a vote of the people is the type [of] debt which is to be repaid from the proceeds of a property tax."); *Bollin v. Graydon*, 177 S.C. 374, 181 S.E. 467 (1935) (citing *Park* as a basis for rejecting a challenge to a county courthouse commission's choice to issue revenue bonds without an election).

[3] Article VIII, section 16 of the South Carolina Constitution provides, in relevant part:

> Any incorporated municipality may, upon a majority vote of the electors of such political subdivision who shall vote on the question, acquire by initial construction or purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants.

of commissioners of public works." (Emphasis added). This statute, however, cannot fairly be construed as an exhaustive list of the municipalities that do not have such a board. Instead, it is a list of the municipalities in which a special act was used to abolish a previously elected board of commissioners of public works and/or eliminate the ability to elect one. There might be any number of municipalities that have abolished their boards of commissioners of public works without a special act or simply have not triggered the need to elect one. *See* S.C. Code Ann. § 5-31-235 (providing a procedure by which municipalities may abolish such boards); *see generally* S.C. Const. art. VIII, § 10 ("No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article."); Letter to The Honorable C. Alexander Harvin, III, Op. S.C. Att'y Gen. No. 77-129 (April 29, 1977) (opining that statewide or general legislation would be necessary to abolish the Town of Manning Water Commission). These municipalities would not be listed in section 5-31-230.

Finally, while our Supreme Court made several statements in *City of Spartanburg v. Blalock* that might suggest a municipal waterworks system funded by revenue bonds should be managed by a board of commissioners of public works, a close reading of that case reveals that the system at issue was acquired pursuant to a predecessor to section 5-31-210 and only improved and expanded using revenue bonds. 223 S.C. 252, 75 S.E.2d 361 (1953). This hybrid funding created the need to either harmonize the two statutory schemes or find the former scheme repealed by implication. *Id.* at 262-63, 75 S.E.2d at 366. On this basis, the Court determined the board of commissioners of public works and city council must be "cooperative agencies" and that city council should act only in a "supervisory" role. *Id.* at 263-65, 75 S.E.2d at 366-67. It would be an unwarranted stretch of this logic to contend that *Blalock* requires a board of commissioners of public works to be elected in municipalities where the plain language of section 5-31-210 has not been triggered.

For these reasons, it is the opinion of this Office that the City of Tega Cay has complied with the letter of the law by choosing not to hold an election regarding its issue of revenue bonds, and therefore, not to trigger the need to elect a board of commissioners of public works.

Very truly yours,

Dana E. Hofferber

Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General