



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
 ATTORNEY GENERAL

September 26, 2002

Charles L. Denniston  
 Commissioner,  
 Town of Ellore Water System  
 2623 Cleveland Street  
 Drawer 170  
 Ellore, South Carolina 29047-0170

Dear Mr. Denniston:

You have asked for an opinion of our Office concerning the Ellore Water System Board of Commissioners ("Board") and its disagreements with the Town of Ellore ("Town"). As was noted in the original letter to this Office in December of 2000 from John J. Fantry, Jr., former attorney for the Board, there are several points of contention between the Board and the Town that have been disputed for months. At one time the Town and the Board attempted mediation to resolve some of these issues, but no formal agreement was ever reached. In light of the contentious history preceding your opinion request, we will attempt only to address the isolated legal questions concerning the imposition of new water rates. First, you ask if the Town Council can prohibit the Board of Commissioners from instituting new water and sewer rates. You also ask if the Town Council may authorize the Mayor or another agent "to enter into a contract for the sale of water or sewage treatment at a rates less than the rates set by the Commission."

By way of background, you have provided the following information:

The Town of Ellore's Board of Public Works was created by special election on October 29, 1924. Afterwards, the construction of a sewer system was authorized as an extension of the Waterworks System. Pursuant to then Section 59-364 of the Code of Laws of South Carolina 1962, by an Ordinance adopted by Council on June 15, 1964, the Waterworks System and the Sewer System were combined into a single system as the Water System of the Town of Ellore. The Commission operates pursuant to Title 5 Chapter 31 of the South Carolina Code of Laws as amended.

Chapter 31 of Title 5 is the chapter governing municipal electric, water, natural gas, and sewer systems in South Carolina. In municipalities in which there are no boards of commissioners

*Rembert C. Dennis*

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of public works, the powers and responsibilities of controlling the public works generally rests with the town council. See S.C. CODE ANN. § 5-31-230. Otherwise, the board of commissioners of public works derives its authority in part from Section 5-31-250, which reads:

The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and *may require payment of such rates, tolls and charges as it may establish* for the use of water and light.

(Emphasis added). The statute as worded clearly authorizes the board of commissioners to determine the necessary rates for the provision of its water and sewer services. By comparison, Section 5-31-260 states that the board of commissioners of public works may not “incur any indebtedness without the concurrence of the city or town council.” Thus, the Legislature indicated under what circumstances it intended to limit the board of commissioners’ independence. Section 5-31-250, however, makes no mention of the town council’s involvement in the setting of rates.

In the past the authority of the board of commissioners to set rates without the input of the town council was challenged by the argument that the Revenue Bond Act for Utilities placed the responsibility to manage the utilities, including determining the rates, in the hands of the town council. See City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361, 368 (1953). The City of Spartanburg based its argument on the Bond Act’s requirement that when revenue bonds are issued for the improvement of public works, the governing body is required to adopt an ordinance describing the contemplated project, fixing rates to be charged for the services, and ensuring that the rates will be maintained to fund the repayment of the obligation. See id. at 365. The City argued that as long as any revenue bonds remained outstanding, the City Council had the sole authority to set the rates and otherwise control the financial affairs of the water system. See id. at 363.

The Supreme Court of South Carolina rejected this argument, however, finding that the Legislature did not intend to “change the fundamental law relating to the autonomy of public works.” Id. at 366. The Court concluded:

... the power to fix rates, dispose of surplus revenue, and otherwise control and direct the fiscal policies of the waterworks system of the City... is vested in the Commissioners of Public Works so long as that body fulfills the covenants and agreements for the protection of the bondholders set forth in the ordinance authorizing the issuance of revenue bonds, but if the Commissioners fail or neglect to carry out these covenants and obligations, the City Council may enforce compliance. If, as respondent argues, it is necessary for the orderly and efficient administration of the affairs of the City ... that the powers mentioned should be vested in the City Council, with the Board of Commissioners as a mere agency of that body,

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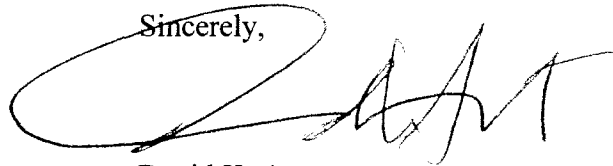
the remedy lies in the legislature and not in the courts.

Id. at 368. This holding was later reaffirmed in Town of Myrtle Beach v. Suber, 225 S.C. 201, 81 S.E.2d 352 (1954), in which the Court held that the commissioners of public works had the independent authority to sell miscellaneous property no longer needed for the operation of the water works system. Finally, in prior opinions of this Office we have consistently concluded that the commissioners of a public works have all powers necessarily incident to the operation and management of the system, including the determination of fiscal policies and the setting of rates. See OPS. ATTY. GEN. Aug. 19, 1959; Oct. 23, 1961; May 23, 1973.

It is the opinion of this Office that the Ellore Water System Board of Commissioners enjoys the same autonomy recognized by the courts in managing its operations and financial affairs. The Board of Commissioners has the sole responsibility for determining the rates to be charged for its services and need not obtain the Town Council's approval or concurrence before setting the rates. Thus, in response to your questions, the Town Council may not prohibit the Commission from instituting new water and sewer rates, nor may the Town Council authorize an agent to contract for lower rates than those set by the Commission for its services.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'DAVANT', written over a large, loopy oval flourish.

David K. Avant  
Assistant Attorney General

DKA/jbc