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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 20, 1998

W.E. Jenkinson, III, Esquire
Williamsburg County Attorney
P.O. Drawer 669
Kingstree, South Carolina 29556

RE: Informal Opinion

Dear Mr. Jenkinson:

You have informed this Office that Williamsburg County has adopted a comprehensive water and sewer ordinance which authorizes the county to regulate water and sewer and do business as a water and sewer authority. The water and sewer district encompasses all unincorporated areas in the county except municipalities in one area which is served by a rural water company. You state that the county has recently hired personnel, authorized various studies into areas that need to be served and has applied for loans for construction. The system is not based on taxation, but on user fees. You further state that the Town of Hemingway, without notice or first seeking county approval, extended their water lines and is currently constructing in the unincorporated areas outside the town limits. You have asked for this Office's opinion on the law in regards to the facts presented.

It is my understanding that this system was adopted pursuant to Article VIII, Section 16 of the South Carolina Constitution and Section 44-55-1410(A) of the South Carolina Code of Laws. These provisions authorize counties to construct and operate water and sewer systems upon approval of a majority of the electors voting on the question in the county.

In regards to the powers of a municipality, Section 5-7-60 of the Code provides in pertinent part as follows:

Any municipality may perform any of its functions, furnish any of its services ... and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract

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with any individual, corporation, state or political subdivision or agency thereof ... subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water a sewer authorities For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *Provided*, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

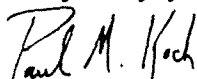
Based on the foregoing, a municipality may not provide water and sewer services within the "designated service area" of another municipality or political subdivision without the approval of the governing body of the municipality or political subdivision concerned. This would, of course, include a county. Section 5-7-60 defines "designated service area" as an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

In this case, questions have arisen as to whether the area set forth in the County Ordinance would constitute a "designated service area" for purposes of the statute. Such a determination would have to be based on the facts of this particular situation. Since this Office does not have the authority to make factual determinations in a legal opinion, I am precluded from making a determination in this regard. Op. Atty. Gen. dated December 12, 1983. However, I believe that it is fair to say that if the area set forth in the Ordinance is a "designated service area," the municipality may not enter into the area without first garnering county approval.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General