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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 7, 1999

The Honorable W. Greg Ryberg
Senator, District 24
P. O. Box 1077
Aiken, SC 29802

Re: Informal Opinion

Dear Senator Ryberg:

You have requested an opinion regarding the State Safe Drinking Water Act, *S.C. Code Ann.* §§44-55-10 *et seq.* The facts underlying your request are as follows, as quoted from your letter of October 23, 1998:

> "A small business in Aiken County had a licensed well driller install a well and water system for use in the business' bathroom which it makes available for its customer's use. However, the small business provides drinking water through a recognized bottled-water vendor, which has installed a bottled water dispenser to provide drinking water for employees and customers. The well and well water are used exclusively for the bathroom facilities and for cleaning of a garage area and not for consumption as drinking water."

You have asked two questions:

1. Does the state Safe Water Drinking Act apply to and require compliance with the DHEC regulations as to the typical bottled water dispensing system which one frequently sees in various commercial and business establishments?

2. Does the Act apply to and require compliance with DHEC regulations for well water systems used by businesses for bathroom facilities, such

> as facilities typically including a commode, a urinal and a bathroom sink with hot and cold water?

The first question is governed by §44-55-20(g). That section provides in part as follows:

> (g) "Public water supply" means (1) any publicly or privately owned waterworks system which provides drinking water, whether bottled or piped, for human consumption, including the source of supply whether the source of supply is of surface or subsurface origin . . . .

In the situation of a bottled-water dispenser provided by a recognized bottled-water vendor, the above language makes it clear that the Act applies to the drinking water supplied in this manner. The bottled-water dispenser is clearly a "system which provides drinking water, [including bottled water], for human consumption. . . ."

In the second situation, involving a well which supplies water intended primarily for use in washing and toilet flushing, we have consulted with DHEC to determine their interpretation of the application of the statute. DHEC contends that the Act applies to such uses. One reason for this conclusion by DHEC is that the water is potentially available for drinking, and DHEC treats all water potential drinking water sources as sources covered by the Act.[1] We concur with the view of DHEC that since the water is potentially able to be used for drinking, it needs to meet the requirements of the state Safe Drinking Water Act. To conclude otherwise would be to create serious enforcement problems, because it would then be possible for individuals to claim an exemption for their well water simply because of the presence of a source of bottled water. DHEC may also be correct in its conclusion that using water for washing and sanitation constitutes "human consumption" of the water, but it is unnecessary to address this contention by DHEC since the potential use of the water for drinking is sufficient in our view to bring it within the state Safe Water Drinking Act. Finally, both the courts and this Office are constrained to defer to administrative

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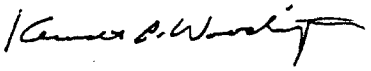
[1] DHEC also contends that even if such water is only used for washing and sanitation, those uses constitute "human consumption." DHEC notes that water used for these purposes is capable of spreading diseases which might be caused by contaminants in the water, just as is the case for water which is ingested. This view has some support in at least one federal case which interprets the federal Safe Drinking Water Act, *see U.S. v. Midway Heights County Water District,* 695 F. Supp. 1072 (E.D. Cal. 1988).

interpretations by the agency charged with the enforcement of certain statutory provisions and will not overturn such interpretations absent cogent reasons. *Logan v. Leatherman*, 290 S.C. 400, 351 S.E.2d 146 (1986).

This letter is an informal opinion only. It has been written by a designated Senior 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.

Please let me know if I can advise further.

Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

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