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The State of South Carolina



Office of the Attorney General

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May 21, 1990

The Honorable Kenneth S. Corbett  
Member, House of Representatives  
414-D Blatt Building  
Columbia, South Carolina 29211

Dear Representative Corbett:

By your letter of April 5, 1990, you have outlined a proposal whereby the Grand Strand Water and Sewer Authority might provide saline water to the proposed Ocean Expo site on Highway 544 in Horry County. You have asked for the opinion of this Office as to whether the enabling legislation of the Grand Strand Water and Sewer Authority would allow the Authority to enter into negotiations whereby Ocean Expo would pay the total cost associated with obtaining sites landward of the critical dune line for the construction of a pump station to initiate saline water transmission to the Ocean Expo site.

The Grand Strand Water and Sewer Authority ("Authority") was established by act of the General Assembly. Section 1 of Act No. 337 of 1971, as amended by Act No. 838 of 1973, now provides in pertinent part that

[i]t shall be the principal function of the authority to acquire supplies of fresh water, capable of being used for industrial and domestic purposes, and to distribute such water in the manner herein provided... . [Emphasis added.]

Similarly, in Section 7 of Act No. 337 of 1971, which section enumerates the powers and duties of the Authority, the following is stated:

The authority shall be fully empowered to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume, and to distribute and sell such water... . [Emphasis added.]

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In Section 7(8), the Authority is authorized to "impound fresh water in lakes and reservoirs" (emphasis added). Nowhere in the enabling legislation or in subsequent amendments thereto was a reference to saline or other non-fresh water.

In construing any statute, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). In doing so, words used in a statute will be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the language of a statute is clear and unambiguous, courts will apply such language literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). It is our opinion that the terms "fresh" or "fresh water" are clear and unambiguous and should therefore be applied literally.

The term "fresh water" is defined as an adjective in Webster's Third New International Dictionary at page 910 (1976 Ed.) as "of or belonging to water that is not salt: living in or taken from fresh water or a body of fresh water ... : consisting of fresh as opposed to salt water... ." As a noun, the term is defined as "a freshwater pond, lake, stream, or river." Id. The term "fresh," an adjective, is defined in part as "not containing or composed of salt water." Id. at page 909.

The Authority, as an administrative agency and political subdivision and as a creature of statute, has no common-law or inherent jurisdiction or powers; therefore, the Authority would have only such powers as have been granted to or conferred upon it by statute, expressly or by implication. See Piedmont & Northern Ry.Co. v. Scott, 202 S.C. 207, 24 S.E.2d 353 (1943) and Op. Atty. Gen. dated February 19, 1988 with additional authority cited therein. In Bostic v. City of W. Columbia, 268 S.C. 386, 390, 234 S.E.2d 224, 226 (1977), the South Carolina Supreme Court stated that "enabling legislation is not merely precatory, but prescribes the parameters of conferred authority."

The enabling legislation examined above refers expressly to "fresh water." Because the General Assembly singled out "fresh water," it may be inferred that waters other than fresh were to be excluded from the Authority's jurisdiction. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938). In light of the express powers granted to the Authority with respect to fresh water and the repeated references to fresh water, it is the opinion of this Office that the Authority would not be authorized to undertake a project involving saline water, such as that described in your letter. The General Assembly could authorize the Authority

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to undertake such a project if it wished, preferably by adoption of a general law to avoid constitutional difficulties. Of course, negotiations to provide fresh water could be undertaken between the Authority and Ocean Expo.

The opinion of this Office is in accord with an opinion given to the Authority on March 13, 1990, by its attorney. In addition to the arguments advanced by this Office, the Authority's attorney has pointed out that the Authority's jurisdiction may not include the Atlantic Ocean, as the actual extent of the boundary (high water mark or low water mark) is not well-defined in the Authority's enabling legislation.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

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