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The State of South Carolina



Office of the Attorney General

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December 11, 1985

Gerald A. Kaynard, Esquire
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Dear Mr. Kaynard:

By your letter of October 28, 1985, you have asked, on behalf of the East Cooper Water Implementation Committee, for the opinion of this Office on two questions. Each will be addressed separately, as follows.

Question 1

Under the definition of "municipality" as contained in Section 6-25-20, Code of Laws of South Carolina (1984 Cum. Supp.), does Mt. Pleasant Waterworks and Sewer Commission qualify for membership in a joint municipal water system as contemplated by Section 6-25-10 et seq.?

By an opinion dated October 17, 1985, this Office concluded that the representative for the Town of Mount Pleasant on the proposed joint municipal water system would be appointed by the Mt. Pleasant Town Council rather than by the members of the Waterworks and Sewer Commission. You are now asking whether the Commission itself may be a member of the joint municipal water system and appoint its own member to serve on the governing body.

Section 6-25-20 (f) of the Code defines "municipality" to include

counties, town, and cities incorporated under the laws of this State; consolidated political subdivisions of this State; and any agency or public body created by the General Assembly of this State or under the

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laws of this State and engaged in the sale and service of water for industrial and domestic purposes.

If the Commission should be deemed a "municipality" under this definition, it appears that the Commission could become a member of a joint municipal water system and thus appoint its own representative.

Clearly, the Commission would not be a county, town, city, or consolidated political subdivision. The Commission as a public body was not created by the General Assembly but was created under the laws of the State, particularly Section 5-31-210 et seq. of the Code, to, inter alia, provide water services to the citizens of Mt. Pleasant. Thus, it appears that the Commission would be a "municipality" as that term is defined in the Code and would be entitled to be a member of a joint municipal water system.

As such a member, the Commission would therefore be entitled to appoint a representative to serve on the governing body pursuant to Section 6-25-50 of the Code and to participate in the system just as the towns of Mt. Pleasant, Isle of Palms, and Sullivan's Island would.

Question 2

Upon the formation of a joint municipal water system, can an elected member of a town council, an elected mayor, or an elected commissioner of a water and sewer commission serve at the same time in their elected capacity and as a commissioner of the joint municipal water system?

The answer to this question is found in Section 6-25-60 (a) of the Code, which states in relevant part:

The management and control of a joint system shall be vested in a commission. The governing body of each member of a joint system shall appoint a representative who shall be a commissioner of the joint system. The representative may be an officer or employee of the member and may also serve ex officio as a member of the commission. ...
[Emphasis added.]

The statute thus authorizes a mayor, member of town council, or commissioner of a water and sewer commission to serve as the representative of the appointing body in an ex officio capacity.

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Under an appointive situation in which representatives are not serving in an ex officio capacity on the joint municipal water system, it appears likely that the representative would be an officer for dual office holding purposes, though this issue is not addressed herein. ^{1/} When one serves in an ex officio capacity in a second position by virtue of his holding a first position, the duties of both being related, then the individual serving in both capacities is not deemed to be holding dual offices. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947).

Therefore, an elected mayor, member of town council, or commissioner of a water and sewer commission would be authorized to serve in his elected capacity, or ex officio, on the governing body of a joint municipal water system as his municipality's representative.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional information or clarification should be necessary.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

^{1/} Criteria for determining whether one holds an office for dual office holding purposes include the exercise of a portion of the sovereign power of the State; whether statutes or other such authority established the position, prescribe its tenure, duties, or salary, or require qualifications or an oath for the position. Article XVII, Section 1A of the State Constitution; Sanders v. Belue, 78 S.C. 171, 58 S.E. 862 (1907); State v. Crenshaw; 274 S.C. 475, 266 S.E.2d 61 (1980).