The State of South Carolina

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February 5, 1985

The Honorable Thomas M. Marchant, III
Member, House of Representatives
503-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Marchant:

By your letter of January 23, 1985, you have asked this Office to consider whether Act No. 276, 1979 Acts and Joint Resolutions, would be constitutional in light of a footnote in an earlier opinion on the Western Carolina Regional Sewer Authority which raised but did not address the question of constitutionality.

Act No. 276 of 1979 provides for the compensation of members of the governing body of the Western Carolina Regional Sewer Authority:

> Notwithstanding any other provision of law, the members of the Western Carolina Regional Sewer Authority shall receive twenty-five dollars for each meeting attended.

The constitutional provision in question is Article VIII, Section 7 of the Constitution of South Carolina which provides that "[n]o laws for a specific county shall be enacted... ." Whether Act No. 276 was enacted for a specific county was not researched in depth until your inquiry of January 23. Upon researching the issue, it is the opinion of this Office that a court faced with the issue would most probably not find Act No. 276 to be violative of Article VIII, Section 7.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional

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in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. Furthermore, while this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

BACKGROUND

The Western Carolina Regional Sewer Authority was established by Act No. 362, 1925 Acts and Joint Resolutions, as the "Greater Greenville Sewer District." Over the decades many amendatory acts have added to the initial service area of the district, authorized the issuance of millions of dollars' worth of general obligation bonds, enlarged the powers of the district, and authorized the levy and collection of taxes from citizens in the service area of the district.

Our research shows that by 1969, and possibly much earlier, the entity begun in Greenville County had taken on a regional scope. The General Assembly recognized that regional nature of the Authority in Act No. 688, 1969 Acts and Joint Resolutions. In section 3 of that act, the legislative delegations of Greenville, Anderson, and Laurens counties were to recommend persons for appointment as members of the governing body. By section 4, the auditors of the three counties were to be notified by the governing body should it have been deemed necessary to raise funds by the collection of taxes. Once the taxes had been collected, then the treasurers of the three counties were to hold the respective funds and disburse them as directed by the governing body. This act appears to reflect the fact that by at least 1969 certain areas of Anderson and Laurens counties, in addition to Greenville County, were receiving services from the Authority.

Acts No. 1409 of 1970, No. 757 of 1971, and No. 673 of 1973, inter alia, authorized the issuance of general obligation bonds, and each act further authorized the auditors of Greenville, Laurens, and Anderson counties to levy and collect taxes to pay the principal and interest from the issuance of such bonds. The 1973 act and the ratification of Article VIII, Section 7 of the State Constitution occurred in the same legislative session and were thus contemporaneous; however, the regional concept of the

Authority was firmly entrenched by 1973. In 1974, by Act No. 1415, the name of the entity was changed to Western Carolina Regional Sewer Authority, again reflecting the regional character of the Authority.

While annexation of areas continguous to the service area of the Authority has been permitted since at least 1970, see Act No. 1414 of 1970, Act No. 277 of 1979 specifically extended the service area of the Authority into Laurens County. Because Acts No. 276 (concerning compensation of Authority members, the act under consideration herein) and No. 277 of 1979 were enacted during the same legislative session, such acts are deemed to be contemporaneous and thus must be construed together, as if they were one act, as long as such construction yields no inconsistency. Cf., South Carolina Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930); Locke v. Dill, 131 S.C. 1, 126 S.E. 747 (1925). While the Authority was well-established as regional by 1979, the General Assembly extended its regional nature to an even greater extent while at the same time increasing the compensation for Authority members.

Finally, the regional aspect of the Authority was again emphasized in 1984 when the General Assembly enacted Act No. 393. In particular, the appointment procedures for Authority members were specified; Greenville, Anderson, and Laurens county legislative delegations were to participate in a specified manner in naming members of the Authority. While the 1984 act certainly was not identical (in language or interpretation) to Act No. 688 of 1969, both acts were similar with respect to involvement by the legislative delegations of all three of the counties involved in the service area of the Authority. Thus, the regional concept of the Authority was reaffirmed by the General Assembly in 1984.

The Authority's regional concept is important not only for its impact upon delivery of sewer services in the affected counties but also for its role in federal waste treatment management projects. Under the federal Clean Water Act, specifically 33 U.S.C.S. § 1288, the Authority has been designated the agency to administer the waste treatment plan for that region of the state. The Authority has thus been recognized as regional in scope by not only the General Assembly but also the State of South Carolina, pursuant to 33 U.S.C.S. § 1288(a)(2), and the federal government.

APPLICABLE LAW

The Supreme Court of South Carolina has interpreted Article VIII, Section 7 in two cases which are similar in some respects to your inquiry: Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), and Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976). For the reasons stated below, we believe that a court faced with the issue could well decide to follow Kleckley and uphold the constitutionality of not only Act No. 276 of 1979 but all other acts pertinent to the Authority enacted by the General Assembly since the effective date of Article VIII, Section 7, March 7, 1973.

The special purpose district in Kleckley was the Richland-Lexington Airport District, comprising the territories of Richland and Lexington counties. The act in question, which permitted the District to issue general obligation bonds, was enacted by the legislature in 1975. In addressing Article VIII, Section 7, the Court stated:

> Read alone, this prohibition against the enactment of laws for a specific county could be given such a broad interpretation that it would prohibit the enactment of a law establishing a state park or a branch of a state college in a designated county. The prohibition against laws for a specific county cannot be given an interpretation which might result if the words were taken by themselves and out of context. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.

265 S.C. at 183-184, 217 S.E.2d at 220.

The Court addressed the issue of whether the operation of an airport related to the "powers, duties, functions and responsibilities, which belong peculiarly to counties." Id. (Emphasis in original.) The court concluded:

> The record here clearly establishes that the function of this airport is not peculiar to a single county or counties. ... It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7.

265 S.C. at 185, 217 S.E.2d at 221. Moreover, the Court stated:

> The important principle is that if the subject matter of the legislation is not peculiar to the political subdivision dealt with by the applicable constitutional provision, the existing plenary power of the General Assembly continues.

265 S.C. at 187, 217 S.E.2d at 222.

A court following Kleckley would most probably examine the powers, duties, functions, and responsibilities of the Authority to determine whether such belong peculiarly to a county. While this Office cannot second-guess the decisions of a court, we believe a court could determine that such powers, duties, functions, and responsibilities are not peculiar to a county, though counties are certainly empowered to provide sewer services. See Section 4-9-30(5), Code of Laws of South Carolina (1983 Cum.Supp.); Article VIII, Section 16 of the State Constitution. The court would probably consider the extent of the area (i.e., tri-county region) served by the Authority. The fact that private, for-profit entities and other special purpose or public service districts provide sewer services throughout the state would also be important to a court contemplating the finding that sewer services are not peculiar to a county.

In Torgerson v. Craver, supra, the special purpose district under consideration was the Charleston County Airport District. The court distinguished Kleckley, noting that the District was essentially a Charleston County political subdivision, the boundaries of which were coterminous with the boundaries of Charleston County. Unlike the district in Kleckley, the mayor of Charleston and the chairman of Charleston County Council served ex officio on the District's governing body. Taxes

raised by a levy on the District were for all practical purposes levied on the county. The Supreme Court stated, in holding unconstitutional an act authorizing the issuance of general obligation bonds:

> Article VIII, § 7, prohibits legislation by the General Assembly for a specific county. Involved here is a matter which the county governing authority can and should deal with instead of the General Assembly.
>
> Kleckley v. Pulliam [cite omitted], relied on by the respondents is of no persuasion because the facts are entirely different. In Kleckley, an airport district was formed by joining Richland County and Lexington County. This Court held that an Act of the General Assembly authorizing a bond issue by the District was not violative of Article VIII, § 7, rationalizing that it was absolutely impossible for either the governing body of Richland County or the governing body of Lexington County to provide for the bond issue. There was involved a matter with which only the General Assembly could deal. The bond legislation was not for a specific county; it was for a region.
>
> The matter at hand involves problems which can be solved by the local governing body of Charleston County. ...

230 S.E.2d at 230. A court considering Torgerson in the context of the Western Carolina Regional Sewer Authority could very well find persuasive the distinctions between the two districts, noting most especially the regional nature of the Authority. Similarly, the governing bodies of Anderson, Laurens, and Greenville counties could not legislate for the Authority. Such power must remain with the General Assembly.

CONCLUSION

In light of our research into the history of the Western Carolina Regional Sewer Authority, we believe that a court faced

with the issue of the constitutionality of Act No. 276, 1979 Acts and Joint Resolutions, would most probably find that Act constitutional in light of the reasoning in Kleckley v. Pulliam, supra, since the Authority is a regional, not county, entity.

Sincerely,

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REVIEWED AND APPROVED BY:

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