

2021 Library

The State of South Carolina



Donna H. 84-31
PIDS

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

March 10, 1986

The Honorable Paul E. Short, Jr.
Member, House of Representatives
126 Main Street
Chester, South Carolina 29706

Dear Representative Short:

You have asked this Office to examine the law pertaining generally to special purpose or public service districts and, more particularly, to the Chester Metropolitan District and Chester Sewer District, to determine whether such bodies, generally or specifically, have the authority to hire and fire an executive director or other necessary personnel. If such authority may not be found, either explicitly or implicitly, you are considering introducing legislation to add such a power to the general powers and duties already granted to such districts.

At the outset, it may be noted that Chester Metropolitan District commissioners, by section 3 of Act No. 1488, 1968 Acts and Joint Resolutions,

shall employ a manager who shall be superintendent-in-charge of the entire operation of the district. The manager shall be employed at such salary as may be determined by the commission. The commission shall have the right at will to remove or discharge a person holding the position of manager. The manager shall be the administrative officer of the district and shall administer the affairs of the commission. ...

The manager is further authorized to hire additional employees, subject to approval of the commission. Similarly, Chester Sewer District commissioners, in section 4(12) of Act No. 1186, 1964 Acts and Joint Resolutions, are empowered to employ "such

The Honorable Paul E. Short, Jr.

Page 2

March 10, 1986

engineering, clerical and other help as it deems necessary, and fix the salaries and compensation of such employees." Clearly, each of these districts has specifically been authorized to employ personnel such as an executive director ("manager") and to determine compensation.

An examination of general law applicable to special purpose or public service districts does not reveal any explicit authority to hire and fire executive directors or employees or to determine their compensation. However, because such districts are political subdivisions similar to counties or municipalities, see Op. Atty. Gen. No. 84-132, their powers would include those specifically granted and those powers necessarily implied therefrom which are necessary to carry out the purposes of the district. Cf., Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Arguably, because special purpose or public service districts are given the power by Section 6-11-100, Code of Laws of South Carolina (1976), to

purchase and build or contract for building such electric light, water supply, fire protection and sewerage systems, may lease, own, hold and acquire all necessary equipment and property for such purpose and operate it They may supply and furnish lights and water and provide for fire protection and sewerage disposal to citizens of such districts and may require an exact payment of such rates, tolls, rentals and charges as they may establish,

they may impliedly be authorized to employ personnel. If the district is to build a system or supply the service, arguably, employees must be hired to perform the tasks necessary to carry out the tasks of the district. Similarly, courts in other jurisdictions have found implied powers to employ personnel in political subdivisions; see, for example, Bridgeman v. City of Derby, 104 Conn. 1, 132 A. 25 (1926); State ex rel. Woods v. Cole, 178 Okla. 567, 63 P.2d 730 (1936); Town of Hominy v. McFarland, 55 Okla. 444, 154 P. 1128 (1916); and City of San Antonio v. Raley, 32 S.W. 180 (Tex. 1895). As has been stated in an analogous situation,

[a] municipality has power to employ a person for a particular kind of work when, and only when, authority to do so has been conferred on it by statute or charter. The grant of such power may be express, or it may be implied, either as an incident to the

The Honorable Paul E. Short, Jr.
Page 3
March 10, 1986

exercise of a power expressly granted or as necessary to enable the corporation to effect the objects and purposes for which it was created and established. ...

62 C.J.S. Municipal Corporations § 702.

It should be noted that various political subdivisions within the State have been expressly granted authority to employ personnel and determine their compensation. See, for example, Code sections 4-9-30 (6) and (7) as to counties; 5-9-30 (1), 5-11-40, and 5-13-30 as to municipalities; and 59-19-90 (2) as to employment of teachers by school trustees. Because such political subdivisions as these have been granted express power to employ personnel, the General Assembly may have viewed such a power as not being implied; however, there is apparently no South Carolina Supreme Court decision addressing the issue. As a matter of caution, you may wish to consider introducing general legislation, perhaps in the form of an amendment to Section 6-11-100, to clarify the power of a special purpose or public service district to employ personnel and determine their compensation.

We trust that the foregoing has satisfactorily resolved your questions. If we may provide further assistance, please let us know.

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