

1984 WL 249690 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 14, 1984

***1 RE: Lake Murray Docks, Inc.**

The Honorable Dalton Sheppard
Member
House of Representatives
Post Office Box 420
Irmo, South Carolina 29063

Dear Representative Sheppard:

Attorney General Medlock has requested that I reply to your letter of August 23, 1984, which forwarded to us questions posed to you by your constituent, James L. Leslie, Jr.

Mr. Leslie's letter raises very complex legal questions involving the respective authority of the State and Federal Government to regulate activities upon an inland impoundment of navigable waters of the United States. These issues are further compounded by the fact that the impoundment in question, Lake Murray, comes under jurisdiction of the Federal Energy Regulatory Commission as part of a power—generating project licensed by that agency. This interrelationship of power and authority among the State, the Corps of Engineers, and the Federal Energy Regulatory Commission at such a project is so complex that it can only be precisely established through extensive litigation in our Federal Courts.

However, it is possible to respond to a portion of Mr. Leslie's inquiries without such protracted litigation.

Mr. Leslie's first inquires whether or not South Carolina Electric & Gas has authority to issue permits and charge permit fees for floating dock facilities on Lake Murray which have already been permitted by the State Budget and Control Board and the U. S. Army Corps of Engineers.

After reviewing Budget and Control Board permit 80-3R-202, issued to Lake Murray Docks, Inc., it appears that nothing contained in that permit prohibits SCE&G from issuing its permit. Budget and Control Board permits, such as this, are issued pursuant to [Regulation 19-450](#).

Permit 80-3R-202 expressly contemplates, in paragraph 10, that a permit would be obtained from SCE&G by Lake Murray Docks, Inc. Further, a review of the sketches accompanying the permit application reveals that the docks, though floating, are held in place by cables anchored to the lake bottom. Determination of the ownership of the bottoms to which these docks are secured would necessarily involve an investigation into and weighing matters of fact, which this Office, of necessity, has never made part of issuing Attorney General's opinions. See, Op. Atty. Gen., December 12, 1983. However, the usual case with impoundments such as Lake Murray is for the utility to acquire title to the lands which are to be flooded prior to impoundment. Assuming that to be the case here, ownership of the anchorage would, in itself, entitle SCE&G to charge a fee for permissive use. Again, a determination of such ownership is the province of the courts and not of this Office.

Additionally, as a licensee of the Federal Energy Regulatory Commission, SCE&G may derive some authority to charge fees for use of 'project' lands and waters. Federal Power Commission Order No. 313, codified at [30 Federal Register 16197](#), contains the following language:

*2 'The Commission recognizes that a licensee will incur costs in providing recreational facilities, and, therefore, will allow appropriate and reasonable expenditures for recreational facilities, including the purchase of additional land to be included as part of the project cost. The Commission also recognizes that certain annual costs will be incurred by a licensee in the operation and maintenance of recreational facilities. Accordingly, the Commission will not object to the imposition by a licensee of reasonable user fees in order to help defray these costs.'

For an interpretation of Order No. 313, as well as the question of the interrelationship of the Corps of Engineers and the Federal Energy Regulatory Commission, I would refer Mr. Leslie to the Federal Energy Regulatory Commission for an interpretation of its own rules as well as any other authority contained in its regulations for charging user permit fees on project waters.

As to the remainder of Mr. Leslie's question, to our knowledge, the State of South Carolina has neither granted nor delegated authority to South Carolina Electric & Gas with respect to the State's control and jurisdiction of navigable waters of the State of South Carolina, where Lake Murray Docks, Inc., is concerned. The permit scheme imposed by SCE&G apparently results from its status as a land owner or as a FERC licensee having jurisdiction over Lake Murray. This is dispositive of the questions posed to you by Mr. Leslie in paragraph II of his letter.

Additionally, Mr. Leslie would like for us to obtain from SCE&G its multi-use boat dock permit fee policy and a certification as to the effective date of that policy. Since that information is in possession of SCE&G, I am, by copy of this letter, referring Mr. Leslie's request to Virgil Summer, Chief Executive Officer of SCE&G.

I trust that this letter is dispositive of Mr. Leslie's question. Should you have further questions, please advise me.

Yours very truly,

M. Richbourg Roberson
Sr. Assistant Attorney General

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