

1981 WL 157954 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1981

*1 Honorable Dill Blackwell
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Blackwell:

You have requested an opinion on four questions concerning the Western Carolina Regional Sewer Authority (hereinafter WCRSA) and the Marietta Water, Fire, Sanitation and Sewer District (hereinafter Marietta) a subdistrict which you indicated was located wholly within the boundaries of WCRSA. First, you asked whether Act 688 of 1969 required that WCRSA take over Marietta's sewer system truck lines and treatment facility, including facilities 'thereafter completed.' The 1969 Act provides that [WCRSA] shall assume upon the effective date of this act, the responsibility for the operation and maintenance of all publicly owned truck lines and sewage treatment facilities within the [WCRSA] and all truck lines and treatment facilities thereafter completed by the subdistricts as described by Section 7 . . .

However Act 758 of 1971 empowered Marietta, which is one of the above described subdistricts, 'to install, operate and maintain a sewer system and all facilities appurtenant thereto.' This provision is in direct conflict with the 1969 Act which provides that WCRSA shall take over the operation and maintenance of all truck lines and treatment facilities within the district including such facilities 'thereafter completed.' It is an established rule of statutory construction that if there is an irreconcilable conflict between a prior statute and a new provision relating thereto, the new provision will control as it is the later expression of the legislature. 2A SUTHERLAND, STATUTORY CONSTRUCTION, § 51.02. Therefore it must be concluded that the legislature intended after the 1971 Act that Marietta develop a sewer system independent of WCRSA, and that the general provision of the 1969 Act should not apply to Marietta.

Second, you asked whether the 1971 Act was legal. The legislature was, at that time, permitted under the Constitution to enact special legislation for special purpose districts located wholly within a county. See, [Ruggle v. Padgett](#), 240 S.C. 494, 126 S.E.2d 553 (1962). Since the Home Rule Amendment, of course, such legislation would not be constitutionally permissible. [Cooper River Park and Playground Commission v. City of North Charleston](#), 273 S.C. 639, 259 S.E.2d 107 (1979). Nonetheless, in 1971 the General Assembly was free under the constitution to enact such legislation. Since it was in conflict with the 1969 Act, it had the effect of merely creating an exception to that Act for Marietta. 2A SUTHERLAND, STATUTORY CONSTRUCTION, § 51.02.

Third, you asked whether the 1971 Act changed the 1969 Act with respect to WCRSA's responsibilities and Act No. 745 of 1967 with respect to its boundaries. The 1971 Act merely provided that Marietta could install, operate and maintain its own sewer system. This system would not be operated or maintained by WCRSA. Thus it provided that WCRSA would not assume responsibility over the facilities 'thereafter completed' by Marietta. The 1971 Act did not however exclude Marietta from WCRSA, see, § 5, Act 745 of 1967, since it does not mention altering its status as a subdistrict of WCRSA.

*2 Fourth, you have asked whether WCRSA is under any mandate to assume operation and maintenance of truck lines and sewage treatment facilities presently owned by Marietta. Our research does not indicate any later statute that would empower WCRSA to take over the operation and maintenance of Marietta's sewer system. Therefore, for the above reasons it is our opinion that WCRSA may not assume operation and maintenance of Marietta's sewer system.

In conclusion it is the opinion of this Office that Act 758 of 1971 has created an exception to Act 688 of 1969, and that, because of that exception, WCRSA is not empowered to assume operation and maintenance of Marietta's sewer system constructed pursuant to the 1971 Act.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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