

1981 WL 157990 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1981

***1 Re: Approval of Transfer of Water and Sewer Utility**

Mr. Rudolph Mitchell
Chairman
South Carolina Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

Dear Mr. Mitchell:

You have written to ask whether or not, under existing South Carolina law, the South Carolina Public Service Commission can approve a transfer of a water and sewer system owned by regulated public utility in South Carolina to a North Carolina municipal utility.

Under the rules of the South Carolina Public Service Commission, R.103-504 and R.103-704, a public utility supplying water and sewerage disposal to the public cannot sell any utility system without first obtaining from the Commission a certificate that the sale is in the public interest. This certificate can be issued only pursuant to statutory notice and a hearing on the sale. After a review of the pertinent legislation, I find no prohibition within the statutes concerning the authority of the Commission to approve a transfer to an out-of-state municipal utility, so long as the hearing requirements are met and a finding that the transfer is in the public interest is reached.

Under the facts that you have presented, a South Carolina public utility company, the Wikoff Utility Corporation, providing water and sewer services to Carowinds Amusement Park in York County, has sought your approval for a transfer of its water and sewer system to the Charlotte Mecklenburg Utility Department. You further stated that an Act had been passed by the North Carolina General Assembly, effective July 1, 1980, authorizing the Mecklenburg Utilities Department to provide water and sewer services to the Carowinds project in York County to any customer requesting the provision of those services. Your regulatory authority gives you the power of approval over the sale or acquisition of any utility system within the State, pursuant to the notice and hearing requirements found in the Commission's Rules and [Regulations, R. 103-504](#) and R. 103-704. Whether or not that transfer is made to an out-of-state utility would be irrelevant, so long as the Commission were to reach a finding that this transfer was in the public interest.

As South Carolina Code of Laws (1976), Section 58-5-30, specifically prohibits the Commission from regulating or interfering with any public utility operated or owned by any municipality, the Charlotte Mecklenburg Utilities Department could not be forced to accede to the jurisdiction of the Commission. However, the North Carolina municipal utility should be required to accede to the jurisdiction of the South Carolina Department of Health and Environmental Control and all applicable rules and regulations governing the provision of water and sewerage services in South Carolina.

I hope that this will be of assistance to you.

Sincerely,

Judith Evans Finuf
Assistant Attorney General

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