

1980 WL 120621 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1980

*1 Sidney L. Jay, Esquire
Attorney for Taylors Fire and Sewer District
Post Office Box 10214
Greenville, South Carolina 29603

Dear Mr. Jay:

In response to your request for an opinion from this Office as to whether or not the Taylors Fire and Sewer District is authorized to pay the salary of a Greenville County deputy sheriff who provides police protection within the service area of the District from its sewer and fire revenues, my opinion is that it is so authorized as hereinafter discussed.

The District was created by Act No. 1099 of 1958 [58 STAT. 2375 (1958)] which provides in Section 4 as follows:

All revenues derived by the commission from the operation of any revenue-producing facility, which may not be required to discharge covenants made by it in issuing bonds, notes or other obligations authorized by this act, shall be disposed of by the commission from time to time for purposes germane to the functions of the district.

In 1972, the District was expressly authorized to provide police protection within its service area [57 STAT. 3662 (1972)] and my understanding is that police protection has been provided by a Greenville County deputy sheriff whose salary is paid by the District. Inasmuch as the original enactment authorizes the District governing body to dispose of District revenues for purposes 'germane' to its functions and one function of the District is to provide police protection, I think that sewer and fire revenue which are not needed to retire bonded debt can be used in paying the costs therefor.

This opinion is not free from doubt, however, because of the following provision of the 1960 amendment to Act No. 1099 of 1958:

The commission is vested with the power to expend any funds in its hands, . . . , for the purpose of providing fire protection for the district. 51 STAT. 2483 (1960).

This express authorization to use District funds for fire protection services could lead to the conclusion that the specific provision with respect to financing fire protection means that the absence of the same specific provision for police protection was intentional and, therefore, police protection cannot be paid for with District funds. Nonetheless, in my opinion, such an interpretation does not have merit because the General Assembly will not be presumed to have done a futile thing, *i.e.*, authorize the provision of police protection with no method provided by which to finance that service. Cf., § 23-13-250, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

Finally, I think that there is a serious question as to whether or not the District can contract or otherwise agree with the Greenville County Sheriff for the assignment or appointment of a special deputy to provide police protection with the District in the absence of specific statutory authorization and I am enclosing a copy of an opinion from this Office to that effect. 1976-77 Ops.Atty.Gen. No. 77-190 at 145. I doubt that the provisions of [Sections 23-27-10 et seq.](#), [CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, have been substantially complied with so as to consider the District a police district within the meaning of those provisions primarily because the District was not created by petition and referendum as those provisions require. The District might want to consider seeking a judicial declaration as to the legality of the means by which it presently provides police

protection pursuant to [Sections 15-53-10 et seq.](#), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, the Uniform Declaratory Judgments Act, or it may want to consider re-creating itself as a police district pursuant to [Sections 23-27-10 et seq.](#)
With kind regards,

*2 Karen LeCraft Henderson
Senior Assistant Attorney General

ATTACHMENT

January 23, 1980
OPINION NO. 80-8 p. 27

Member

House of Representative

SUBJECT: State agencies, Public Service Authority, loan to President to purchase a home; Public funds, loan to President of the Public Service Authority to purchase a home; Public funds, bonds, Private loan to Public Service Authority President came from reserve funds not bond revenues.

SYLLABUS: South Carolina Public Service Authority did not exceed its powers in making loan to its President for purchase of home from revenues of authority as an isolated transaction and in light of existing circumstances.

Daniel R. McLeod
Attorney General

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