

1979 WL 42768 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 18, 1979

***1** Ladson F. Howell, Esquire
Beaufort County Attorney
Post Office Box 112
Beaufort, South Carolina 29902

Dear Mr. Howell:

You have requested an opinion whether the county can contract with various political subdivisions within the county and the Beaufort—Jasper County Water Authority to act as the applicant agency for federal grants and loans to construct wastewater facilities, and then to transfer such funds to the respective agencies for use in constructing such facilities. It is our opinion that the county may perform this function.

The county has considerable powers in the area of water quality control. It has been given the power to provide for land use, to regulate water treatment and distribution, and distribution, and to regulate sewage collection and treatment. [§ 4-9-30\(5\), \(9\), S.C. CODE](#), 1976. In addition the Constitution authorizes a county, upon meeting certain conditions, to acquire and operate water and sewer utility systems itself. [Article VIII, Section 16, S.C. CONST.](#) Furthermore, a county can agree with a municipality or other political subdivision for the joint administration of any function or the exercise of powers. [Article VIII, Section 13, S.C. CONST.](#) Both counties and other local governments have the authority to accept grants of money and to spend such money for public purposes. 2A ANTIEAU, MUNICIPAL CORPORATION LAW, § 20.12. Therefore, it is our opinion that the county may contract with the various political subdivisions within the county, acting as a management authority for water quality control within the county, to apply for federal funds on behalf of those political subdivisions and to administer the expenditure of those funds in accordance with the county's water quality control plan.

The county would not be required to conduct a referendum as to this matter so long as the county does not acquire or operate any water or sewer utilities. [S.C. CONST., Article VIII, Section 16](#). Should the county assume the responsibility for providing water or sewer utilities within the county and thereupon contract with another agency to provide that service on behalf of the county then a referendum would be required. Opinion of the Attorney General, June 26, 1978. (Attached)

Second, you asked whether a municipality which has entered into such an agreement with the county can enact a mandatory sewer use ordinance outside the corporate limits of the municipality if it should expand its sewer and water service to such unincorporated areas. It is our opinion that the municipality may not do so.

However, the county would likely have the power to enact a mandatory sewer use ordinance through the exercise of its power to regulate public health. [§ 4-9-30\(5\), S.C. CODE](#), 1976; 4 ANTIEAU, COUNTY LAW, § 34.02; [People v. Smith](#), 121 ILL.2d 572, 173 N.E.2d 485 (1961). But, the county has not been given the authority, either by statute or the Constitution, to delegate that legislative function to another body. Therefore, any mandatory sewer use ordinance for unincorporated areas of the county must be enacted, if at all, by the county council.

Sincerely yours,

***2** David C. Eckstrom
Staff Attorney

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