

1979 WL 43243 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 3, 1979

*1 R. Markley Dennis, Jr., Esquire
Dennis, Dennis & Watson
Post Office Drawer 1174
Moncks Corner, South Carolina 29461

Dear Mr. Dennis:

In response to your request for an opinion from this Office as to whether or not Act No. 578 of 1973 [58 STAT. 1041 (1973)], which created the Berkeley County Water and Sewer Authority (Authority), is constitutional, this Office has consistently taken the position that enacted legislation, unless facially invalid, is presumed constitutional until a court of competent jurisdiction declares otherwise pursuant to the Uniform Declaratory Judgments Act [[§§ 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended]. If such an action were instituted with regard to Act No. 578 of 1973, my opinion is that it would be declared invalid as a law for a specific county prohibited by [Section 7 of Article VIII of the South Carolina Constitution of 1895](#), as amended. See, e.g., [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.2d 875 (1975). Even if the Act were found to be unconstitutional, however, the actions of the Authority would be valid as actions of de facto public officials. See, e.g., [State ex rel. McLeod v. Civil and Criminal Court of Colleton County](#), 266 S.C. 279, 223 S.E.2d 166 (1976).

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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