

1976 WL 30743 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 25, 1976

**\*1 A COUNTY MAY PARTICIPATE FINANCIALLY WITH A MUNICIPALITY IN THE CONSTRUCTION AND OPERATION OF A SEWERAGE TREATMENT SYSTEM WHICH WILL SERVE BOTH THE MUNICIPALITY AND CERTAIN AREAS OF THE COUNTY.**

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QUESTION PRESENTED:

Is it legally permissible for a county to participate financially in the construction of a sewerage system by a municipality if the collection system will extend beyond municipal limits and serve portions of the county?

STATUTES, CASES, ETC., INCLUDED:

South Carolina Constitution, Article VIII, Sections 13 and 16 and Article X, Section 6; [Doran v. Robertson](#), 203 S.C. 434, 275 S.E.(2d) 714 (1943); [Knight v. Salisbury](#), 262 S.C. 565, 206 S.E.(2d) 875 (1974).

DISCUSSION OF ISSUES:

The Town of Kingstree is applying for federal funds for the construction of a wastewater treatment plant for the Town of Kingstree and surrounding areas. The waste treatment plant itself will be located within the municipal limits of the Town of Kingstree but a significant portion of the collection lines will extend into the county, beyond the municipal limits and serve some industry and residential areas of the county. The federal funds applied for are matching funds, i.e., the federal funds must be matched by a local funding effort. You have indicated that the City of Kingstree is desirous of receiving financial assistance from the county government for Williamsburg County in accumulating the local share of funds to match the federal funds. You have further indicated that the county of Williamsburg has expressed a willingness to participate financially in this project if it is legally permissible.

It is clear that prior to the 1973 ratification of the new Article VIII of the South Carolina Constitution, Article X, Section 6, of the South Carolina Constitution represented a legal impediment to a county government's attempt to engage in the sewer business. Article X, Section 6, as interpreted in State Supreme Court cases such as [Doran v. Robertson](#), 203 S.C. 434, 275 S.E.(2d) 714 (1943) prohibited counties from expending tax funds for the purpose of engaging in the construction and/or operation of sewerage systems saying that the operation of sewers is not an 'ordinary county purpose' such as can be accomplished by tax levies or public bonding. However, Article VIII, Section 16, as amended in 1973, provides as follows:

Any county or consolidated political subdivision created under this Constitution may, upon a majority vote of the electors voting on the question in such county or consolidated political subdivision, acquire by initial construction or

purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric. (Emphasis added)

Furthermore, Article VIII, Section 13, of the Constitution now provides as follows:

\*2 Nothing in this Constitution shall be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

It would appear, therefore, that Article VIII, Sections 13 and 16, has removed any question as to whether or not a county and municipality may cooperate in the construction and/or operation of a sewage collection and treatment system. As to whether or not tax or public bond revenues may be utilized in such an effort, the only reasonably substantive legal impediment to such utilization would perhaps again be Article X, Section 6, of the Constitution. On this point, however, the State Supreme Court has effectively declared that Article X, Section 6, will not stand as a prohibition against a county or municipality engaging in the sewage disposal business:

It is argued that under our decision, specifically [Doran v. Robertson](#), 203 S.C. 434, 275 S.E.(2d) 714 (1943), counties could not by reason of Section 6 of Article X establish water or sewer systems. Article VIII, Section 16, as already noted, expressly empowers counties to act in these areas. Quite obviously, these powers must exist despite conflicting provisions of Section 6 of Article X. ([Knight v. Salisbury](#), 262 S.C. 565, 574, 206 S.E.(2d) 875 (1974))

Although the quoted language from the [Knight v. Salisbury](#) case is dictum, it is an impressively straightforward statement as to how the Court is likely to rule should the question arise.

#### CONCLUSION:

It is, therefore, the opinion of this office that a county may participate financially with a municipality in the construction and operation of a sewerage treatment system which will serve both the municipality and certain areas of the county.

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