

1975 WL 29398 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1975

***1 Re: Counties—Bull Swamp Rural Water Company, Inc.**

W. T. Klapman
County Attorney
P. O. Box 234
Orangeburg, South Carolina 29115

Dear Mr. Klapman:

You have requested an opinion as to whether Resolutions of the Orangeburg County Commission and the Orangeburg County Legislative Delegation pledging financial support to the Bull Swamp Rural Water Company, Inc., represent a binding obligation on the part of the County.

The Bull Swamp Rural Water Company, Inc., was incorporated pursuant to Sections 12-771, et seq., Code of Laws of South Carolina (1962), as amended, as a 'corporation not for profit'. Its Articles of Incorporation were filed in the Office of the Secretary of State on January 4, 1972. Section 12-771 provides:

As used in this chapter 'corporation not for profit' means a corporation which upon its original organization is financed in whole or in part by a loan made under the provisions of the Consolidated Farmers Home Administration Act . . . and no part of the income or assets or which shall be distributable to its members.

The purpose of the corporation is to provide water and/or sewer service to an area encompassing a portion or northern Orangeburg County, excluding the Town of North.

As I understand the situation, a minimum number of subscribers (customers) is required before the F.H.A. will loan funds for construction. The Bull Swamp Rural Water Company, Inc., is currently approximately 156 customers short of the required number and Orangeburg County proposes to pay in what would otherwise be paid by that number of customers until new customers are added to the system, gradually reducing the County's obligation. The amount to be paid in is up to \$10,300 per year for a period of up to 40 years.

At the present time there is no statute specifically authorizing such an expenditure and no funds have been appropriated for this purpose. Article X, Section 9, of the Constitution of South Carolina (1895), as amended, requires that money be drawn from the public treasury only in pursuance of appropriations made by law. Code Section 1-54, makes it unlawful for any public officer, State or county, to enter into a contract for any purpose in a sum in excess of the tax levied or the amount appropriated therefor. See Also Section 5 of the 1974-75 Orangeburg County Supply Act (Act No. 1475 of 1974), and Code Sections 1-701 and 14-315. The general rule is that neither a county nor its officials may incur indebtedness, binding upon the county, unless authorized to do so by law. 20 C.J.S., Counties, § 222.

Further, neither the Legislative Delegation nor the County Commission possesses the power to levy taxes and appropriate funds. Code Section 14-3061 confers broad powers upon the County Commission in the control of the fiscal and financial affairs of the County, but does not authorize the levy of taxes or appropriation of funds; which powers remain in the General Assembly and are accomplished each year by the passage of a county supply act. There is no assurance or requirement that the General Assembly will levy taxes and appropriate funds in compliance with the Resolutions.

*2 Accordingly, it is the opinion of this office that the Resolutions pledging the financial support of Orangeburg County to the Bull Swamp Rural Water Company, Inc., do not represent a binding obligation of Orangeburg County.

Very truly yours,

Wade S. Kolb, Jr.
Assistant Attorney General

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