

1975 WL 29469 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 4, 1975

***1 RE: Grand Strand Water and Sewer Authority—Obligation to Provide Sewer Service Within the Service Area**

Richard M. Booth, Esquire
Floyd and Booth
Attorneys at Law
Post Office Box 215
Conway, SC 29526

Dear Mr. Booth:

You have requested an opinion from this Office as to the Authority's legal obligation to service persons or firms within the Authority's service area. The facts as set forth in your Memorandum are that the Authority has the opportunity to purchase the Deerfield Development sewer treatment plan on highly favorable financial terms. This treatment plant would be used to service potential customers within the Authority's service area and specifically in the Deerfield Development. Mr. Platt, owner of the Deerfield Development sewer treatment system will only sell the sewer treatment system to the Authority upon the conditions that the deed of conveyance contain a provision to the effect that the sewer system be used to service only certain designated geographical areas or tracts of land as the plant treatment will permit. The deed of conveyance will, without so stating in direct terms, exclude any and all areas owned or operated by his sisters, with whom he is in apparent disagreement. As you so aptly state in your Memorandum.

To serve nondesignated areas would breach proposed conditions and limitations contained in the deed of conveyance. Failure to serve non-designated areas might give rise to litigation by potential customers denied service on the basis that the Grand Strand Water and Sewer Authority is a public body and is therefore required to provide such service if the Deerfield Development sewer plant capacity will permit.

This Office is of the opinion that the Authority must serve any customer, requesting service, who lives in the service area, provided the treatment plant from which they seek service has sufficient capacity.

The Grand Strand Water and Sewer Authority was created by Act No. 337, June 2, 1971, 57 STAT. 444. The Act provides in relevant part:

There is hereby created a body corporate and politic to be known as the Grand Strand Water and Sewer Authority, hereinafter referred to as the 'authority.' Its service area shall include all of the area in Horry County between the Inland Waterway and the Atlantic Ocean, excluding any area within an incorporated municipality which owns and operates a municipal waterworks system, and all areas of the county designated as growth areas by the Economic Development Administration on the effective date of this act. It shall be the principal function of the authority . . . and to build, acquire, construct, operate and maintain such sewage treatment and collection facilities as shall, in the opinion of the authority, be deemed necessary . . . (Emphasis added).

...

The authority shall be fully empowered . . . and construct sewage collection and treatment facilities for and provide sewer service to persons, firms, corporations, municipal corporation, political divisions and the United States Government, or

any agencies thereof, at any point within its service area. To that end, the authority shall have the following powers . . .
(Emphasis added).

*2 The language used by the Legislature in establishing the Authority is mandatory in nature in that in all relevant instances the verb 'shall' is used.

Certain forms and types of statutes are generally considered mandatory. Unless the context otherwise indicates the use of the word 'shall' (except in its future tense) indicates a mandatory intent. 1A Sutherland Statutory Construction § 25.04 at 301 (1972)

Due to this mandatory language, the Authority has no choice but to serve, upon request, individuals or firms falling within its service area, limited only by the capacity of the Authority's facilities.

As you point out if the Authority purchased the Deerfield Development System, subject to Mr. Platt's conditions, nevertheless, citizens of the service area excluded from Mr. Platt's condition could bring a law suit and force the Authority to supply services.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

1975 WL 29469 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.