

1973 WL 26675 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 27, 1973

***1 RE: The Department of Parks, Recreation and Tourism may not allow private use of its sewage disposal facilities.**

South Carolina Department of Parks, Recreation and Tourism

Several private concerns have requested that the Department of Parks, Recreation and Tourism allow them to share existing sewage disposal systems operated by the Department of Parks, Recreation and Tourism in its State Parks. The Department has requested an Attorney General's opinion on the legality of sharing its sewage disposal system with others. It is assumed that the private concerns intend to pay for the use of the facilities.

The powers and duties of the South Carolina Department of Parks, Recreation and Tourism are enumerated in South Carolina Code Annotated, Section 51-76 (1969 Supp.). Generally, these powers include promotion and development of recreational areas, State parks and the tourism industry. In addition, the duties and powers of the State Forestry Commission, Division of Parks, the Wildlife Resources Commission, Division of Outdoor Recreation and the State Development Board, Division of Travel and Information are conferred upon the Department of Parks, Recreation and Tourism. South Carolina Code Annotated, Section 51-76 (1969 Supp.). Neither the Department's enabling legislation nor the powers and duties transferred to it from the other agencies authorizes the Department to build and operate sewage disposal systems for others or share facilities that are already in operation with others on a fee basis.

In [Piedmont and Northern Railway Company v. Scott](#), 202 S.C. 207, 24 S.E.2d 353 (1943), the Court specifically held that agencies and subdivisions of the State possess only the power and authority vested in them by appropriate legislation.

‘Thus at the very inception of the consideration of the question whether the Commission has the power asserted by it in a given case we are confronted with both a constitutional and also a statutory prescription that the power exists only if it has been vested in the Commission by Act of the General Assembly.’ 202 S.C. at 217.

South Carolina's position in regard to the power and authority of agencies and subdivisions appears to be generally in accord with the positions of other jurisdictions. It is generally held that subdivisions and agencies ‘possess such powers and authority, and only such powers and authority as have been validly vested in them by the Legislature.’ [Public Administrative Bodies and Procedure](#), 73 C.J.S. § 54 at 379-80 (1951).

The power and authority to construct and operate a sewage disposal system for the use of others has not been vested in the Department of Parks, Recreation and Tourism. The General Assembly did not place the Department in the sewage disposal business and did not give the Department even a discretionary power to provide sewage disposal facilities for the use of private individuals when the Department deemed it appropriate to provide such facilities. Without specific legislative authority to provide sewage disposal facilities for the use of others, the Department may not and can not undertake such a responsibility.

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