

1973 WL 26744 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1973

*1 Mr. W. G. Lyman, Jr.
Aiken County Attorney
Messrs. Henderson, Salley, Rodenheimer & Lynn
Attorneys at Law
Post Office Box 517
Aiken, South Carolina 29801

Dear Mr. Lyman:

Thank you for your letter of April 9, 1973, inquiring as to whether Aiken County may establish a Countywide Public Service Authority without authorizing legislative enactment. By Public Service Authority is apparently meant an Authority with the power to supply water and to provide sewage and solid waste collection and disposal, or a combination of such services, to individuals, public and private corporations and political subdivisions, and to perform such acts as may be necessary to provide drainage within the service area.

I refer you to Section 16 of the Local Government Amendment which was ratified March 7, 1973. This section provides, in part: 'Any county—may, upon a majority vote of the electors voting on the question in such county—acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric—.'

This constitutional provision, in my opinion, is self-executing and the procedures authorized therein may be undertaken without legislative enactment.

With respect to the scope of the authority granted, there is some doubt as to whether it would include authority to undertake solid waste collection and disposal. That question is now enroute to the Supreme Court of South Carolina from Charleston County and a definitive answer can only be made after that court has acted.

The Local Government Amendment must, in my opinion, be read with the restrictions contained in Article 10, Section 6, of the Constitution. When the Local Government Amendment was submitted for vote of the people, it was intended that Article 10, Section 6, be deleted in areas where it imposed restrictions upon the counties, but because of legislative difficulties, Article 10, Section 6, was not submitted for a vote and is, therefore, an existing part of the Constitution. Whether it will receive a more liberal construction by the Supreme Court of this State, in view of the adoption of the Local Government Amendment, is a matter which can only be guessed at and decisions of the type such as that arising in Charleston County will eventually determine the answer to this question. In the meantime, until the old limitations upon the counties contained in Article 10, Section 6, are removed, it is somewhat doubtful if the counties can engage in such matters as solid waste disposal. Where my advice has been sought, I have suggested that declaratory judgments be sought to ascertain the validity of a proposed action prior to expenditure of large sums of money. I am enclosing herewith a copy of an opinion directed to Senator Richard W. Riley of Greenville which sets forth my views in this regard. The precise meaning of the clause contained in Section 16, 'may operate water, sewer, transportation or other public utility systems', must be ultimately resolved by the Supreme Court. Until this is done, any opinion as to its meaning is necessarily subject to some reservation.

*2 If I may be of any further service, please feel free to call upon me.

Very truly yours,

Daniel R. McLeod
Attorney General

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