

1973 WL 26749 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1973

*1 Honorable James M. Morris
Senator
Senatorial District No. 12
Box 10
Manning, South Carolina

Dear Senator Morris:

You have requested that this Office advise you whether:

- (1) The City of Manning can abolish the Water works Commission when it was established by a favorable vote of the electors of the City of Manning without a vote of the people?
- (2) The City of Manning can incur indebtedness and/or levy additional charges on water users of the City of Manning without the recommendation or approval of the majority of the Water Works Commission?
- (3) The City of Manning or the Water Works Commission can extend its water lines or furnish water to persons or areas outside the city limits?
- (4) The City of Manning can acquire the funds of the Water Works Commission without the approval or recommendation of the Water Works Commission

The various questions posed by you will be discussed below seristim.

Initially, it must be pointed out that in order to intelligently deal with the questions you have raised, it was necessary to engage in the following assumptions:

- (a) that the waterworks in question were established and constructed pursuant to what is now Sections 59-241, et seq., of the Code of Laws of South Carolina;
- (b) that the 'Water Works Commission,' is composed of the three commissioners of public works as is provided for in Section 59-241 and Sections 59-171, et seq., of the Code of Laws of South Carolina.

Furthermore, it should also be noted that the law in this area is far from settled and has been the subject of heated litigation. Thus it is impossible to reach absolutely definitive answers to your questions.

Apparently the City of Manning (by using the term City of Manning, I assume that you are referring to the City Council) cannot abolish the Water Works Commission of Manning. The Commission of Public Works (Water Works Commission) is a creature of statute, authorized and existing pursuant to Section 59-171 of the Code of Laws of South Carolina. Inasmuch as the General Assembly provided for the establishment of the Manning Commission of Public Works, it would take an act of the General Assembly to abolish the Commission. Section 59-174 of the Code of Laws of South Carolina does just that by abolishing the boards of commissioners of public works in a number of specified municipalities, and vesting their former functions and powers in the various city or town councils. In Sections 59-174.1 and 59-174.2, the General Assembly grants authority to the towns of

Blacksburg and McCormick to abolish their offices of the commissioners of public works. It is significant that no such authority has been granted to the City of Manning anywhere in Title 59 and absent such an express grant of authority by the General Assembly the City of Manning is without power to abolish the Water Works Commission.

The answer to the second question set forth above is twofold. First, the City of Manning may incur indebtedness without the recommendation or approval of the Commissioners of Public Works. The 'Municipal Bond Act' Section 47-834 of the Code of Laws of South Carolina provides that:

*2 The municipal council of any municipality may issue general obligation bonds of such municipality for any corporate purpose of such municipality to any amount not exceeding the constitutional debt limitation applicable, if such there be, under the conditions prescribed by this article.

Under this article, approval by the commissioners of public works is not a prerequisite to the issuance of municipal general obligation bonds; however, petition and vote of the municipal freeholders is necessary. See Section 47-835 through 47-842 of the Code of Laws of South Carolina. Additionally, Sections 59-361, et seq., of the Code of Laws of South Carolina, provide for the issuance of public works revenue bonds. The bonds may be issued by ordinance or resolution of the appropriate municipal council and prior consent or approval of the commissioners of public works is not contemplated by the statute. Section 59-381, Code of Laws of South Carolina. Section 59-382 provides, however, that 'no bonds . . . issued pursuant to this article shall constitute an indebtedness of the borrower . . .'

It is also notable that Section 59-181 provides that no board of commissioners of public works may incur any indebtedness without the concurrence of the city or town council.

The answer to the second part of question two set forth above is in the negative. The City of Manning cannot levy additional charges on water users of the City of Manning without the recommendation or approval of the majority of the water works commission.

Section 59-179 of the Code provides in part that:

The board of commissioners of public works . . . shall have full control and management of [any waterworks]. It may supply and furnish water to citizens of the city or town . . . and may require payment of such rates, tolls and charges as it may establish for the use of water . . . (emphasis added).

Our supreme Court in the [City of Spartanburg v. Blalock](#), 223 S.C. 252, 267, 75 S.E.2d 360 (1953), in discussing the various powers of the Commissioners of Public Works and the Spartanburg City Council states:

It is our conclusion that the power to fix rates . . . of the City of Spartanburg is vested in the Commissioners of Public works. . . .

In regard to your third question, apparently the water lines of the City of Manning can be extended to furnish water to both persons and areas outside of the City limits. Section 59-241 of the Code of Laws of South Carolina provides that:

Any city or town may:

- (1) Construct . . . waterworks . . . within or without, partially within and partially without, their corporate limits for the use and benefit of such city or town and the inhabitants thereof;

Furthermore, Section 59-365 provides in relevant parts that.

Any municipality of this State may purchase or construct a waterworks system . . . and in furtherance thereof may purchase or construct any necessary part of any such system either within or without the limits of such county or the corporate limits of such city or incorporated town.

*3 Finally, Section 59-452 of the Code provides that.

Any city or town may extend its system [water and sewer] to any property beyond the city limits provided that both the water and sewer system are extended to such property.

It is clear from the foregoing that the City of Manning can extend its water to persons or property outside the city limits; however, in doing so, Section 59-462 would also apparently require that Manning also extend its sewer system at the same time.

Finally, although there is nothing in the South Carolina Code which directly touches on your last question, seemingly the City of Manning could not acquire the funds of the Water Works Commission without the commission's express approval and/or an act of the General Assembly. As has already been pointed out, supra, the City of Manning could not abolish the Water Works Commission without legislative approval, it therefore follows that the funds of the Commission could not be acquired without such approval since Section 59-179 of the South Carolina Code vests the board of commissioners of public works with 'the full control and management' of the fiscal affairs of the water works system.

I hope that the foregoing sufficiently answers the questions which you have posed. If we can be of further assistance, please call upon us.

Very truly yours,

Ellison D. Smith, IV
Assistant Attorney General

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