

1973 WL 26761 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 1, 1973

*1 Mr. G. Ross Anderson, Jr.
Messrs. Anderson, Kenyon & Epps
Attorneys at Law
230 West Whitner Street
Anderson, South Carolina 29621

Dear Ross:

Thank you for your letter of May 8, 1973, inquiring as to the legality of the Town of Pendleton accepting title to approximately two miles of water lines which lie outside the Town limits of Pendleton and are in the Town limits of Clemson, which is located in Pickens County.

It appears to me that this matter is governed by Section 16 of the local government constitutional amendment which was ratified on March 7, 1973, and which provides:

‘Any incorporated municipality may, upon a majority vote of the electors of such political subdivision who shall vote on the question, acquire by initial construction or purchase, and may operate gas, water, sewer, electric, transportation, or other public utility systems and plants.’

Section 59-241(1), Code of Laws, 1962, authorizes the purchase of water works outside of a city limit.

Neither of these provisions touches upon the issue of the legality of purchasing a line lying within another municipality, however.

The general authorities seem to indicate that this is normally provided for by statute, but there is no such authorizing statute in this State. At least one authority holds that where water is to be supplied to residents of another municipality, it is essential that the consent of that municipality be obtained. It is not clear from the reading of that case that the statute authorized such acquisition.

It is my opinion that the matter would be best settled by an authorization of the General Assembly, and if this is not obtained, it is my opinion that pendleton may acquire this water line, but that the consent of the Town of Clemson must be obtained as a condition precedent thereto. With such a consent having been obtained, I do not see how a complaint could validly arise.

The answer to your question is certainly not clear, to me, but I believe that the appropriate course of action, short of legislative authorization, is to undertake the purchase with the consent of the Town of Clemson. It is my opinion also that such purchase, under the new constitutional provision, will require the approval of a majority vote of those persons voting on the question of acquisition.

Very truly yours,

Daniel R. McLeod
Attorney General

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