

1973 S.C. Op. Atty. Gen. 256 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3592, 1973 WL 21047

Office of the Attorney General

State of South Carolina

Opinion No. 3592

August 6, 1973

**\*1 A municipality by contract can make improvements to an existing autonomous water and sewer district within the municipality. For improvements to the water facility an election must be held.**

Senator

Greenville and Laurens County

Greenville, S. C.

This is in reply to your request for the opinion of this office on whether the municipality of City View can levy an ad valorem property tax for the purpose of making improvements to the water system which serves its residents.

The existing Water and Sewer District was created by Act No. 442, Acts and Joint Resolutions of 1929 at 859. The District was made a body politic and corporate to be governed by a Commission which is empowered to establish, enlarge, maintain, conduct and operate such water systems in the District for the protection of health and for the establishment of proper sanitary conditions. In 1959, (thirty years later) the municipality of City View came into existence. The boundaries of the City are 'the same property enclosed in the boundary line of the original City View Water and Sewer District.'

In Act No. 386, Acts and Joint Resolutions of 1965 at 693, the General Assembly empowered all municipalities and all special purpose districts within the State to enter into contracts \* \* \* by which they agree among themselves to pay for the cost of establishing, operating, maintaining, improving and enlarging systems for the collection of sewage, for the disposal of sewage and for the treatment of sewage, all or any of such purposes. Section 6 of the Act, Section 59–507.4 of the Code, provides that the parties to the contract are fully empowered to raise the funds by ad valorem taxes levied in the manner that other ad valorem taxes are levied.

By Section 59–241(4) of the Code, the Legislature has also conferred on cities the authority to contract for the erection of waterwork plants. An election, however, is required as a prerequisite to such action. See Section 59–243 of the Code. An exhaustive search suggests that no other legislation exists which would authorize improvements by a municipality to the water system of another political subdivision. It is a general rule that municipalities have only such powers as are expressly granted by statute unless necessarily implied. Any doubt concerning the existence of municipal power is resolved by the courts against the municipality. See *Marshall v. Rose*, 213 S. C. 428, 49 S. E. 2d 720.

The question of the use by one municipal corporation of revenue derived by a tax levied and collected by another municipal corporation has given some concern. In the particular case at hand, this concern is tempered by the fact that the boundaries of the two corporations are the same so that the Water and Sewer District serves all the residents of the City. In *Allen v. Adams*, 66 S. C. 344, 44 S. E. 938, our Supreme Court was presented with the question of whether, under an Act authorizing towns to issue bonds for public purposes and for the express purpose of erecting school buildings, the town had the authority to issue the bonds in light of the fact that the school would be controlled, not by the town, but by the usual school authorities. The Court held that a public, corporate purpose was served by the erection of a school building within the boundaries of the town even though the town had no control over schools. It has also been held that there is no prohibition in the South Carolina Constitution against the Legislature authorizing a municipal corporation to levy a tax which will benefit another municipal corporation. See *Smith v. Robertson*, 210 S. C. 99, 41 S. E. 2d 631.

\*2 It is the opinion of this office that the municipality of City View may enter into agreements with the Water and Sewer District whereby improvements made by the District to the existing sewage facility would be compensated by an ad valorem property tax levied by the City. However, there appears to be no authority for such a contract with the District for improvements to the existing water facility unless an election is held.

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