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April 23, 2003

Opinion No. 03-051

Powers of the Watauga River Regional Water Authority

QUESTION

Is the Watauga River Regional Water Authority (the "Authority") authorized to impose fees on member utility districts or individual water customers without the approval of the boards of directors of the respective utility districts?

OPINION

Yes, the Authority is authorized to impose fees on member utility districts and the county or individual water customers of those districts and the county in order to hire an executive director, as well as to pay other operating expenses. The approval of the boards of directors of the respective utility districts or of the county commission is not required. Whether the fee can be imposed on the utility customers of municipalities that later contract with the Authority depends on the terms and conditions of the contract.

ANALYSIS

This opinion concerns the authority of the Watauga River Regional Water Authority (the "Authority"). We are informed that the Authority has imposed a surcharge on utility services provided by its member utility districts and the county in order to fund the salary for an executive director. The question is whether the Authority is authorized to impose such a charge unilaterally, or whether the governing body of each utility district and the county must agree to the charge.

The Authority was created and operates under 2001 Tenn. Priv. Acts Ch. 29. The Authority was created for the purpose of planning and operating a water and wastewater system, to plan and develop the water resources of the geographic region, and to provide environmental services and secure economic benefits to the geographic region that it encompasses. 2001 Tenn. Priv. Acts Ch. 29, § 1. The Authority is governed by a seven-member board of directors. The initial members are the Carter County Executive or his or her designee; and one director selected by each of the governing bodies of the North Elizabethton Utility District, the First Utility District, the Siam Utility District, the Hampton Utility District, the Roan Mountain Utility District, and the South Utility District. 2001 Tenn. Priv. Acts Ch. 29, § 3(b). The board also includes a director selected by the governing body of any municipality that enters into an agreement with the Authority regarding a system, facility, or service. *Id.* at § 18. The utility districts and Carter County are authorized to

advance, donate or lend money to the Authority and to provide that funds available to them for a system shall be paid to the Authority. 2001 Tenn. Priv. Acts Ch. 29, §§ 15(c) & 16(d). The term "system":

> means a water and wastewater system, which shall include, but not be limited to, all devices and systems used in the storage, treatment, recycling and reclamation of sewage of residential, commercial and industrial wastes of a liquid nature to restore and maintain the chemical, physical and biological integrity of the State's waters; or any devices and systems used in the treatment and distribution of water, including intercepting sewers, outfall sewers, sewage collection systems, water storage facilities, water transmission lines, pumping, power and other equipment, and other appurtenances, extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities, and any works.

2001 Tenn. Priv. Acts Ch. 29, § 2(12).

The Authority is expressly authorized to collect fees for the "services, facilities, and commodities of any *system*." 2001 Tenn. Priv. Acts Ch. 29, § 6. But, as defined above, the term "system" appears to include a water or wastewater treatment system that is actually operating, and not the cost of hiring an executive director for the Authority.

The private act governing the Authority also provides:

> The Authority shall have the following powers in addition to those specified in other sections of this act, together with powers incidental thereto or necessary for the performance of those hereinafter stated.
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> (12) To have control of its systems, facilities, and services with the *right and duty to establish and charge rates, fees, rental, tolls, deposits and other charges for the use of the facilities and services of the Authority*, of the sale of materials or commodities by the Authority and to collect revenues and receipts therefrom, not inconsistent with the rights of holder of its bonds, refunding bonds, and notes.

2001 Tenn. Priv. Acts Ch. 29, § 4 (emphasis added). The act does not define "services." But the private act is intended to be liberally construed. Section 19 provides:

> This act is remedial in nature and shall be liberally construed to effect its purpose or providing for a systematic and efficient means of

> distributing and encouraging the best utilization and conservation of water resources and wastewater service and the powers herein granted may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter except as herein expressly provided. Provided, however, that the continued operation of any utility district entering into an agreement with the Authority, including the districts, as provided in Section 18 of this act, shall be in compliance with the Utility District Law, Tennessee Code Annotated, Title 7, Chapter 82.

2001 Tenn. Priv. Acts Ch. 29, § 19. The term "districts" refers to the six districts listed above. 2001 Tenn. Priv. Acts Ch. 29, § 2(5).

We think it can be argued that an executive director, by implementing the purposes for which the Authority was created, will be providing services to each district and the county represented in the Authority. Further, we think imposing a utility surcharge on the customers of a utility district to defray these costs is consistent with the Utility District Law. For this reason, the Authority is authorized to impose fees on member utility districts and the county or individual water customers of those districts and the county in order to hire an executive director, as well as to pay other operating expenses. The approval of the boards of directors of the respective utility districts or of the county commission is not required. Whether the fee can be imposed on the utility customers of municipalities that later contract with the Authority depends on the terms and conditions of the contract.

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