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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Blaine Galliher  
Member, House of Representatives  
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PENDING LITIGATION FILED IN ETOWAH  
COUNTY (CV-2005-764, June 2005).

Municipalities – Water and Sewer Boards –  
Corporate Limits – Utilities – Etowah  
County

A separately incorporated utility board organized under section 11-50-310, *et seq.*, of the Code of Alabama has no power to require customers to annex into the authorizing municipality. Accordingly, the utility board has no authority to discontinue utility service to those customers who do not annex into the authorizing municipality.

Dear Representative Galliher:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Does a separately incorporated public utility authorized by a municipality under section 11-50-310, *et seq.*, of the Code of Alabama have the authority to require its customers/ratepayers to annex into the authorizing municipality to continue receiving utility services?

2. Does a separately incorporated public utility authorized by a municipality under section 11-50-310, *et seq.*, of the Code of Alabama have the authority to disconnect or discontinue utility services for customers/ratepayers who do not annex into the authorizing municipality?

FACTS AND ANALYSIS

Municipalities have the authority, when deemed expedient and necessary by the municipal governing body, to authorize the incorporation of public corporations for the purpose of operating a water system, a sewer system, a gas system, an electric system, or any one or more of these systems. ALA. CODE § 11-50-310, *et seq.* (1992 & Supp. 2004). These public corporations are public utilities. Your request states that, pursuant to these provisions, the City of Gadsden authorized the creation of a separately incorporated public utility referred to as the Gadsden Water Works and Sewer Board ("Board").

You further state that the Board currently serves customers/ratepayers inside and outside the corporate limits of the City of Gadsden. A group of customers residing outside the corporate limits of Gadsden have been informed that they must annex into the City of Gadsden to continue to receive services from the Board. You note that the customers are not currently delinquent in payment of their utility bills.

The powers of the Board are set forth in section 11-50-314 of the Code of Alabama and generally include the power to do all things necessary to carry out the purposes for which the corporation was created. ALA. CODE § 11-50-314 (1992). The Board is specifically given the following power:

To acquire, purchase, construct, operate, maintain, enlarge, extend and improve any system or systems, the operation of which is provided for in the certificate of incorporation of such corporation or in any amendment thereto (whether or not such system or systems were in existence and whether or not such system or systems were privately owned prior to acquisition by such corporation and whether such system or systems are located within or without or partly within and partly without the limits of the municipality which authorized the organization of such corporation or within the limits of another municipality) and to receive, acquire, take and hold, whether by purchase, gift, lease, devise or otherwise, real, personal and mixed property of any nature whatsoever that its board of directors may deem a necessary or convenient part of such system or systems.

ALA. CODE § 11-50-314(a)(4) (1992). Thus, the Board may operate a water and sewer system inside and outside the corporate limits of the City of Gadsden, the

authorizing municipality. The directors of the Board must act to carry out the corporate purposes of the Board and may only act to carry out these purposes. See *Jones v. Ellis*, 551 So. 2d 396 (Ala. 1989); *Holcomb v. Forsyth*, 216 Ala. 486, 113 So. 516 (1927).

The Board, as a public corporation, may exercise only those powers conferred upon it by statute. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903, 905 (Ala. 1980); Opinion to Honorable Norman J. Gale Jr., City Attorney, City of Citronelle, dated October 13, 2000, A.G. No. 2001-011. Although the Board has broad powers to operate the utility system, the Board does not have the power to annex property into the authorizing municipality. Nor is the Board authorized to generate revenue or funds on behalf of the authorizing municipality such as would be generated by annexation. Requiring annexation as a condition of continued service does not relate in any way to the operation of the system, nor does it convey any benefit upon the system. Accordingly, the Board is not authorized to require its customers to annex into the authorizing municipality to continue to receive utility services from the Board. Because the Board has no power to require its customers to annex into the authorizing municipality, the Board has no authority to discontinue utility services to those customers who do not annex into the authorizing municipality.

#### CONCLUSION

A separately incorporated utility board organized under section 11-50-310, *et seq.*, of the Code of Alabama has no power to require customers to annex into the authorizing municipality. Accordingly, the utility board has no authority to discontinue utility service to those customers who do not annex into the authorizing municipality.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division