



POPE ZEIGLER
LAW FIRM

popezeigler.com

Concentrating on public finance, governmental and utility representation.



POPE ZEIGLER
LAW FIRM

THE ROLE OF COMMISSIONERS | 05.22.14

Topics

What may you do? What are your responsibilities and powers?

-and-

What should you do? What are the roles of Commissions and managers/staff?

Home Rule v. Dillon's Rule

- Home Rule - provided for in Article VIII, § 17 of the South Carolina Constitution

“The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.”

- *Evins v. Richland County Historic Preservation Com'n* – the “local governments” described in Article VIII, § 17 only include Cities and Counties

“Home Rule applies only to counties and municipalities, not special purpose districts.”

Home Rule v. Dillon's Rule

- Dillon's Rule – Applies only to SPDs

“A municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; Second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable.”

- *Evins v. Richland County Historic Preservation Com'n* – the “local governments” described in Article VIII, § 17 only include Cities and Counties

What may you do?

- Determined by what powers your Commission has been granted by the General Assembly
- The SPD Enabling Legislation
 - Some are codified but most must be researched in the annual Acts and Joint Resolutions of the General Assembly
 - The enabling legislation of many SPDs has been amended a number of times and is located in many different Acts
- General statutes
 - Most are located in Title 6 of the Code but others are scattered throughout
 - Some general statutes only apply to those SPDs created before the enactment of Home Rule (March 7, 1973)

Power of Individual Commissioners

- Individual Commissioners have no power to act outside of official action of the Commission
- Commissioners must be qualified to hold their seat on the Commission
 - Do you live in the correct part of the District?
 - Were you appointed or elected in the proper manner?
 - Has your appointed term expired?
- Commissioners are “officials” of the State and are subject to dual office holding restrictions
 - May not also serve in any other constitutional office (e.g., police officers, other boards and commissions of state or local government, elected offices)

SPD Enabling Legislation

- SPDs can always exercise those powers expressly stated in their enabling legislation
- Example: Boiling Springs Fire District, Greenville County

SECTION 3. Powers and duties.—The board shall have the following duties and responsibilities:

(a) To buy such fire-fighting equipment as the board deems necessary for the purpose of controlling fires within the money allocated or made available to the board for such purposes.

(f) To promulgate such rules and regulations as it may deem proper and necessary to insure that the equipment is being used to best advantage of the area.

(h) To borrow not exceeding twenty thousand dollars on such terms and for such a period as to the fire control board may seem most beneficial for the fire district in anticipation of taxes. The indebtedness shall be evidenced by a note issued by the members of the board and the county treasurer. The full faith and taxing power of the Boiling Springs Fire District is hereby irrevocably pledged for the payment of the indebtedness.

SPD Enabling Legislation

- Example: Startex-Jackson-Wellford-Duncan Water District, Spartanburg County

SECTION 3. There is hereby committed to the district the functions of constructing, operating, maintaining, improving and extending a water distribution system, and a system for fire protection within the district. To that end, the commission shall be empowered as provided below:

8. Build, construct, operate and maintain water lines and water mains throughout the district, and all apparatus necessary for the proper functioning of the same, and from time to time to enlarge and extend the same.

11. Distribute and sell water on such terms and rates as it shall from time to time approve. To that end the commission shall be empowered to place into effect and to revise, whenever it so wishes or may be so required, a schedule of rates and charges for water furnished by its water distribution system. The commission shall be further empowered to sell water beyond the limits of the district, on such terms as it shall approve, wherever it shall be economically feasible to do so.

General Laws Applicable to SPDs

- These give SPDs a variety of additional powers (in some cases depending upon the service they provide)
- Examples include:
 - Power to issue revenue bonds (Chapter 21 of Title 6)
 - Power to refund (refinance) revenue bonds (Chapter 17 of Title 6)
 - Power to fund water and sewer lines through Front-Foot Assessments (S.C. Code Ann. § 6-11-1230(4))
 - Emergency powers of fire districts (Article 9, Chapter 11 of Title 6)

Local Laws and Special Legislation

- Article VIII, § 7 of the South Carolina Constitution prohibits the General Assembly from enacting special laws for specific counties

“The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties No laws for a specific county shall be enacted and no county shall be exempted from the general laws.”

- Prevents the General Assembly from:
 - Creating new SPDs in single counties
 - Changing the powers or structure of individual SPDs in single counties
- Prohibition against special legislation was intended to place the power related to SPDs with the SPDs themselves or County Council

General Laws and Multi-County SPDs

- General Assembly can still enact general laws that affect all SPDs
- General Assembly can [technically] enact specific laws targeted at SPDs located in more than one County
 - Court cases interpreting Article VIII, § 7 have determined that this is permissible
 - Fort Hill Natural Gas Authority v. City of Easley
 - Providing for changes to Multi-County SPDs is beyond the ability of any one County Council
 - Special legislation for Multi-County SPDs can be a very useful tool for adding powers to SPDs or fixing problems with enabling legislation but should not be abused – the courts could always change their mind

What should you do?

- What are the appropriate roles for governing boards and directors/managers?
- Cities and counties are given explicit direction - the roles of councils and managers are determined by their form of government
 - Legislative functions always remain with council
 - Responsibility for administrative functions changes depending upon the form of government
- Roles in SPDs are not determined by statute but by good governance principles

What should you do?

- The two areas of functional responsibility: Policy and Administration
- Policy: Handled by the Commission
 - The “What” and “Why” matters for the SPD
- Administration: Handled by a manager/director/chief and staff
 - The “How” “When” and “Where” matters for the SPD

“Don’t tell people how to do things; tell them what to do and let them surprise you with the results.”

- George S. Patton

Typical Responsibilities

- The Commission generally has the responsibility for all legislative functions including:
 - Setting rates and fees
 - Adopting a budget
 - Hiring a Manager/Director/Chief
- The Manager/Director/Chief generally has the responsibility for implementing policy set by the Commission
 - Preparing a budget
 - Advising the Commission of the needs of the SPD
 - Running the day-to-day operations of the SPD



POPE ZEIGLER
LAW FIRM

LEGISLATIVE UPDATE | 05.22.14

Topics for Discussion

- Legislation Affecting SPDs
- Amendments to the Underground Facility Damage Prevention Act

Enactments Affecting SPDs

- One Joint Resolution was enacted during 2014 that directly affected SPDs
 - S.1198 Approves new DHEC regulations to strengthen and improve the existing regulation and make appropriate revisions to address land application of sludge with PCB contamination
- A number of bills have passed one of the houses of the General Assembly by the crossover date and remain under consideration

Senate Bills Affecting SPDs

As of the May 1, 2014 crossover deadline, three other bills affecting SPDs have passed the Senate and remain under consideration by the House:

- S.964: Adds an exemption to the millage cap limitation § 6-1-320 for operating revenue necessary to maintain a fire district's ISO rating
 - Reported favorably out of the Ways and Means Committee
- S.293: Amends the enabling legislation of the Murrell's Inlet-Garden City Fire District (a Multi-County SPD) to levy up to 14 mills
 - Reported favorably out of the Ways and Means Committee
- S.601: Amends the lobbying statutes to apply them to local governments
 - Referred to the Judiciary Committee where it has likely died

House Bills Affecting SPDs

As of the May 1, 2014 crossover deadline, three other bills affecting SPDs have passed the House and remain under consideration by the Senate:

- H.3894: Adds the factor of the some types of diminution of a landowner's remaining property to those considered when calculating compensation for condemnation
 - Referred to a Senate Judiciary Subcommittee

- H.5195 Adds three members to the Commission of the Palmetto Rural Fire District
 - Passed the House and has been sent to the Senate.

- H.5225: Creates a joint county fire district within Florence [and a little bit] of Darlington Counties
 - Passed the House and has been sent to the Senate

Budget Proviso Related to First Responder Services

- Would have prevented SPDs from imposing a fee for costs related to responding to motor vehicle accidents
- Association was successful in having it removed
- Watch for this to come up again!



Affects of the Underground Facility Damage Prevention Act

The Underground Facility Damage Prevention Act

Intent was to create a centralized notification center to contact if a person planned to dig.

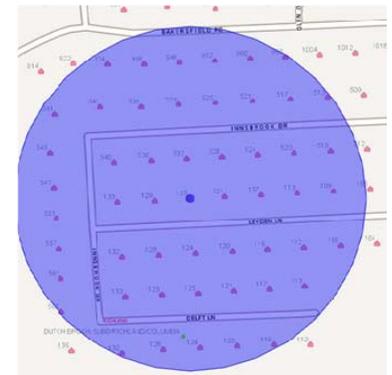
- Forces all utilities to pay to become members of the notification center (SC811)
- SC811 must be notified of excavations three days prior to performing the work
- SC811 passes along the notification to utilities who are to mark their lines in the area
- Utilities must review every notification to determine if marking is necessary

All utilities will have to join SC811 by June 7, 2015

How SC811 Operates

The sole purpose of SC811 is to act as a “pass-through” for notifications between utilities and those who plan to dig.

- Notifications to SC811 include only the start-date and duration of digging, the type of digging and the location of the work up to one-quarter mile in length or five addresses
- SC811 creates a buffer of up to 250' around the entire address and forwards the notification to all utilities with lines within that buffer
- Tickets must be put in every 15 days for continuing projects
- **Each utility must research each notification and respond to SC811 by marking lines or informing SC811 that marking is not necessary**
- **Utilities must research and respond to thousands of notifications annually**

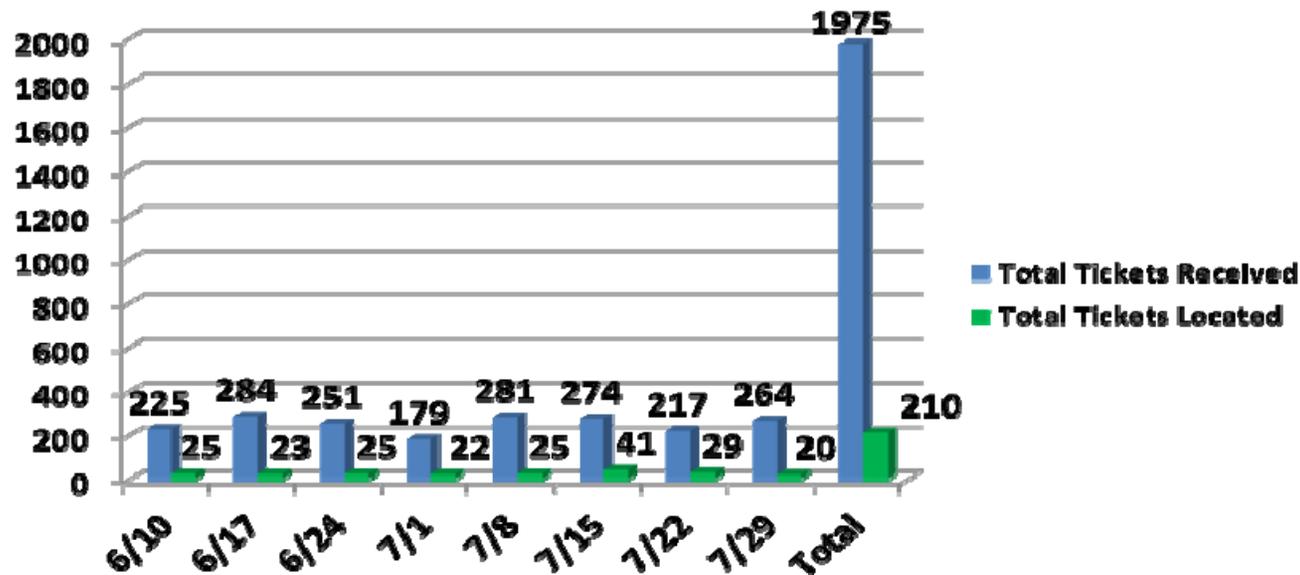


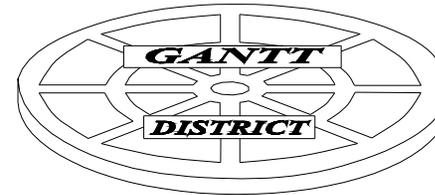
**500' Buffer
Of One Address**

Few Notifications Require Marking

As few as 11% of all notifications passed on to utilities actually require marking but the utility must review and respond to SC811 for each notification. Enormous amounts of unnecessary work pulls staff away from essential operating and maintenance duties

**ReWa 8-Week Pilot Program
Notifications Received v. Notifications Marked Week-by-Week**





Gantt Fire, Sewer & Police District

The projected annual cost to Gantt for joining SC811 will be \$160,804—or 31% of Gantt’s total budget.

Pre-811 Act (5-Year Averages):

- Calls to Locate – 9 per year.
- Annual Costs to Locate – \$851 per year.

Post-811 Act:

- Annual Cost of Membership in SC811 – \$1,304
- Projected Notifications Annually – 1,650 per year.
- Projected Annual Cost to Locate – \$159,500
- Projected Annual Cost of Lost Productivity to Review and Respond to Notifications – \$87,600

**SC811 Cost as % of Gantt’s Total Budget
(\$520,228)**



Metropolitan Sewer Subdistrict

The projected annual cost to Metro for joining SC811 will be \$374,200 – 6% of Metro’s total budget.

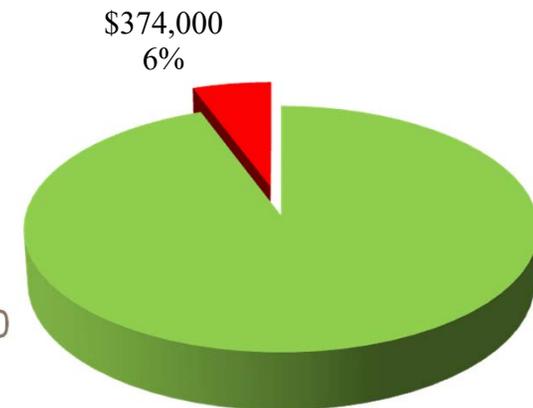
Pre-811 Act (5-Year Averages):

- Average Annual Calls to Locate – 30
- Average Annual Costs of Locates and Damage to Lines – \$12,100

Post-811 Act:

- Annual Cost of Membership in SC811 – \$24,200
- Projected Notifications Annually – 30,656
- Labor and Equipment Costs Under SC811– \$350,000

**SC811 Cost as % of Metro’s Total Budget
(\$6,618,840)**



Solutions?

H. 4866

Amends the act to allow publicly owned utilities to decide whether or not to use SC811 for their water and sewer lines and allow people to contact these utilities directly when they opt-out.

- People are still required to contact these utilities before they dig and utilities are still required to respond to requests to mark lines – gives utilities more discretion

Make SC811 More Efficient

Any changes that reduces the number of unnecessary tickets also reduces the cost

- Further reduce the size of the buffer around excavations
- Require more information from excavators before determining that a ticket is necessary



POPE ZEIGLER
LAW FIRM

Margaret C. Pope
mpope@popezeigler.com
803.354.4901

C.D. Rhodes
cdrhodes@popezeigler.com
803.354.4911

popezeigler.com