



ALAN WILSON
ATTORNEY GENERAL

November 20, 2012

The Honorable Dennis C. Moss
Member, House of Representatives
306 Silver Circle
Gaffney, South Carolina 29340

Dear Representative Moss:

Attorney General Alan Wilson has referred your letters of October 19, 2012 & November 9, 2012 to the Opinions section for a response. The following is this Office's understanding of your questions presented and the opinion of this Office concerning the issues based on that understanding.

Issue:

- 1) In order for South Carolina Code § 58-5-390 to apply, does a tap have to be dedicated solely to a fire sprinkler or may the tap also supply other water uses and have separate meters?
- 2) If a business has a larger tap only for the purpose of the fire sprinkler system, would the business be required to pay a fee based on the larger tap or for the size of tap that would be required for the normal day-to-day water use?

Short Answer:

- 1) South Carolina Code § 58-5-390 would most likely apply to any fire sprinkler system, regardless of whether the tap supplies only the fire sprinkler or not.
- 2) This office does not answer factual questions, but if your constituent is not able to resolve these issues with the utility company, the other possible venue would be for a court to answer these factual questions.

Law/Analysis:

- 1) This Office previously addressed a similar question for you in 2011 concerning fire sprinklers. In that opinion, this Office reiterated the law in stating that a minimum monthly fee for a fire sprinkler may not exceed the actual costs of the water line. Ops. S.C. Atty. Gen., 2011 WL 2214071 (May 18, 2011).

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942). Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing

statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006).

South Carolina Code § 58-5-390 says:

(A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system.

In analyzing the statute, the plain meaning of the words is clear. There is no ambiguity as to what utilities may charge fees for fire sprinkler systems because it applies to all utility companies. There are no exceptions for charging more than the installation and maintenance charges.

The next place to look is at the legislative intent. The legislative intent is unambiguous. It reads "...it is the purpose of this act to create meaningful incentives for the installation of fire sprinkler systems." 2008 South Carolina Laws Act 357 (H.B. No. 4470). The legislative intent would support a finding that the statute applies to all fire sprinkler systems without exception, even if the tap supplies other water uses.

South Carolina Code § 58-5-390(A) provides that fees for the installation and maintenance of a fire sprinkler system may not exceed the "actual costs associated with the water line to the system." The "actual costs" include the following:

- 1) direct labor;
- 2) direct material;
- 3) the necessity of increased capacity; and
- 4) other direct charges associated with the separate fire sprinkler line.

The statute also requires the direct costs to be "documented by either an invoice or work order that specifically assigns the costs to the separate fire sprinkler line." S.C. Code § 58-5-390(B). The language in this part of the statute is also clear and would imply the burden of showing the cost of the installation and maintenance of the sprinkler line would be with the utility company to provide the documentation supporting the charges.

2) The size of a tap needed and whether or not an individual would be required to pay a larger fee based on a larger tap needed for a sprinkler system is a factual question. The issue would need to be resolved with the utility company. If your constituent is not satisfied with the answer from the utility company, a court may be able to resolve these factual issues and answer the underlying questions. As you may well be aware, this Office does not issue factual opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).

Please note if the water company is a public utility, as defined in South Carolina Code § 58-5-10(4), then then any issues should be addressed with the public service commission. Ops. S.C. Atty. Gen., 1978 WL 34948 (June 19, 1978).

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Conclusion:

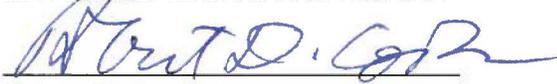
Based on the conclusion that South Carolina Code § 58-5-390 applies to any fire sprinkler taps, a utility company may not charge more than the actual costs of the installation and maintenance of the fire sprinkler system. The other factual issues should be addressed with the utility company or by a court. However, this office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General