

1976 WL 30454 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 6, 1976

*1 Honorable William H. Stroud
Representative
Greenville County
Route 2
Box 202
Piedmont, SC 29673

Dear Representative Stroud:

Attorney General McLeod has referred your letter of April 20, 1976, concerning the Western Carolina Sewer Authority to me for reply. It appears that in calendar year 1975, the Authority undertook to change from billing for sewer service via ad valorem property taxes to billing at the flat rate of 53¢ per 1000 gallons of water used. To accomplish the changeover, the area covered by the Authority was divided into 4 subdistricts. Ad valorem taxes were charged to all persons throughout the year 1975, but in addition, the property owners in the four districts were introduced to flat rate billing one district at a time. Each calendar quarter of the year saw the changeover of one more subdistrict to the new charging system, so that by the fourth quarter, all property owners were being charged according to the flat rate. At the close of 1975, the ad valorem tax was discontinued and the flat rate continues to be charged to all users instead of the tax.

A question has arisen as to whether this method of changeover improperly caused unequal charges to users during 1975, and thus constituted a denial of equal protection of the law (S. C. Constitution, Article 1, Section 3). Those users who were billed in the fourth quarter paid for sewer service at the flat rate in only one quarter, while all other users were charged the flat rate in more than one quarter (presumably, all users paid the ad valorem assessment all year).

The Supreme Court of South Carolina, quoting the U. S. Supreme Court, has stated that 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' [State v. Solomon](#), 245 SC 550, 572, 141 S.E.2d 818, 830 (1965). This same principle applies to any disparate classification (at least of an economic nature) made by a subdivision of the state. The legitimacy of the classification of users into different districts thus depends on whether that classification was a rational one, based on all the facts. If no attempt has been or will be made to equalize the amounts paid in 1975 by residents of the various subdistricts, then it appears probable that the rates charged in that year would have borne no rational relationship to the amount of sewer service provided to each of the four classes of users and that thus the practice would be in violation of Article 1, Section 3. Of course, in any contested proceeding which might arise in connection with the matter, the Authority would have the opportunity to show that its changeover procedure was rationally conceived.

I enjoyed talking with you the other day and will be glad to answer any other questions which you might have regarding this matter.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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