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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

April 4, 2005

David L. Tedder, Esquire
City Attorney for Hardeeville
P.O. Box 1282
Beaufort, S.C. 29901-1282

Dear Mr. Tedder:

You have inquired as to the constitutionality of a City of Hardeeville Ordinance imposing a user fee upon certain fire protection and emergency medical services. In your letter, in part, you explain that:

> The City is bisected by I-95, Highway 17 and 278, and has a disproportionate number of emergency calls resulting from high speed traffic accidents involving non-residents. We often have 18 wheelers who crash, overturn, spill contents and cause huge clean-up and traffic control problems which our small city is ill equipped financially to bear.

You further explain that in response to the increased financial burden, the City enacted the ordinance which charges a user fee for fire and emergency medical services for both residents and non-residents in specific situations. Finally, you add that your inquiry into the constitutionality of the ordinance stems from the fact that recently the City had received responses from numerous insurers who had denied claims based upon the alleged unconstitutionality of the ordinance. You include a sample of such a letter with your inquiry. The letter simply claims that the "ordinance is not constitutional nor is it in compliance with State Statutes regarding motor vehicle accidents" but provides no further explanation as to the grounds for this claim. We contacted a representative from the insurance company regarding the company's conclusion. Apparently, the company believes the ordinance is unconstitutional because it violates equal protection to charge non-residents a user fee while not requiring residents to pay the same fee.

Law / Analysis

Sections 5-7-60, 6-1-330 and 4-21-10 are especially pertinent to your inquiry. These provisions authorize the imposition of user fees, including the provision of fire protection and emergency medical services. Section 5-7-60 generally authorizes a municipality to furnish services and specifically provides:

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Request Smith

> Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges thereof and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *Provided,* however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

Section 6-1-330 generally authorizes a municipality to impose user fees for services rendered and provides:

> (A) Local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.
>
> (B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by a fee is five percent or more of the imposing entity's prior fiscal year's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.
>
> (C) If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice.

Section 4-21-10 specifically authorizes the city to provide fire and emergency services and to charge a fee for such services as follows:

> The governing body of any county may by ordinance or resolution provide that the county shall provide fire protection services, ambulance services and medical clinic facilities. Services may be provided by use of county employees and equipment or by contract with municipalities or private agencies. Counties may contract with water and sewer authorities to make provision for fire protection services. As used in this act "private agencies" shall include but not be limited to nonprofit corporations organized pursuant to Chapter 35 of Title 33 and financed in whole or in part by the Farmers Home Administration.
>
> A special tax, fee or service charge may be levied against property or occupants thereof in areas receiving such services. Proceeds of such taxes, fees or service charges shall be used to defray the cost of providing the particular service for which they are levied, including the fulfillment of contract obligations with municipalities and private agencies.
>
> Any municipality may by resolution choose not to participate in any such services or facilities provided such resolution is filed with the county governing body within ninety days after written notice is given the municipal governing body. The written notice shall specify the nature of the services to be rendered and the level of taxes to be levied.

We begin our analysis with the principle that a municipal ordinance is presumed valid. *Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1991). An ordinance will not be declared invalid unless it is clearly inconsistent with general state law. *Hospitality Assn. of S.C. v. County of Chas.*, 320 S.C. 219, 464 S.E.2d 113 (1995). Furthermore, any ordinance must be demonstrated to be unconstitutional beyond all reasonable doubt. *Southern Bell Telephone and Telegraph Co. v. City of Chas.*, 285 S.C. 495, 331 S.E.2d 333 (1985). As noted in a prior opinion of this Office, dated January 3, 2003, "... keeping in mind the presumption of validity and the high standard which must be met before an ordinance is declared invalid, while this office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with a state statute. Thus, ... an ordinance may continue to be enforced unless and until set aside by a court of competent jurisdiction."

Our Supreme Court has developed a two-part test to determine whether a municipal ordinance is constitutional. First, the court must determine whether the municipality has the power to enact such an ordinance. *Hospitality Ass'n. of South Carolina, Inc. v. County of Charleston, supra*. Second, if it is found that the municipality has the power to enact the ordinance, the court must determine whether the ordinance violates the Constitution or the direct laws of the State. *Id.* Upon review, and applying the high standard necessary for a court to declare an ordinance

unconstitutional, it is our opinion that a court would conclude that the ordinance in question is constitutionally valid. The ordinance is, in our opinion, neither beyond the power of the municipality to adopt, nor in conflict with the general laws or constitution.

Section 5-7-60 clearly authorizes a municipality to perform "any of its functions" and "furnish any of its services, except services of police officers." The Hardeeville ordinance specifically imposes a user fee for fire and emergency medical services provided by the town which is authorized pursuant to Section 4-21-10. Furthermore, Section 6-1-330 authorizes a municipality to "charge and collect a service or user fee" so long as the revenues are "used to pay costs related to the provision of the service or program for which the fee was paid." Section 6-1-330 (A), (B). Upon review of the statutory law, we thus believe that the Town of Hardeeville possesses the power to provide the aforementioned services for a reasonable fee.

It has been argued by the insurance company's representative that the ordinance is unconstitutional because it violates the Equal Protection Clause. We have previously stated that equal protection challenges to municipal ordinances have generally not been successful. See, *Op. Atty. Gen.* July 17, 1989. The courts have found that the requirements of equal protection are satisfied if (1) the classification bears a reasonable relationship to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on a reasonable basis. *Smith v. Smith,* 291 S.C. 420, 354 S.E.2d 36 (1987).

Our Supreme Court addressed the Equal Protection question in *Sloan v. City of Conway*, 347 S.C. 324, 555 S.E.2d 684 (2001). There, the Court rejected the argument that a municipality possesses a duty to charge reasonable rates for water to non-resident customers. Citing *Childs v. City of Coumbia*, 87 S.C. 566, 70 S.E. 296 (1911) which had upheld an out-of-city water rate which was four times that of residents, the Court in *Sloan* concluded that "[a]bsent a specific legislative directive, there is no reasonable rate requirement for service to nonresidents." 347 S.C. at 330. The Court further held that any service at all to nonresidents "arises only from contract." *Id.* at 331. Thus, according to the *Sloan* Court, "[b]ecause City has no duty to charge reasonable rates other than by agreement, and its rates comply with this agreement, summary judgment was properly granted." *Id.* at 331.

With respect to any Equal Protection argument, the Court likewise rejected such contention. In the Court's view, Equal Protection is not violated, if "there is any reasonable basis to support" a legislative classification. *Id.*, no. 10. The Court noted that "[h]ere out-of-city customers pay no taxes to City and this is a reasonable basis for disparate treatment." With respect to any argument that the disparate charges to out-of-city customers violate the Due Process Clause, the Court dismissed such argument, noting that "[r]aising revenue is a legitimate governmental goal and selling water at higher rates to customers who do not pay taxes is rationally related to this goal. *Id.*

In this instance, the insurance company states that the company is especially concerned with what is referred to as the unfair treatment of non-residents. The ordinance provides that residents are exempted from paying a user fee for certain services because those services are funded through collection of city taxes. City of Hardeeville, Ordinance Number 2004-5-6A. However, residents are required to pay a user fee when the service provided exceeds that which their taxes cover. On the other hand, non-residents are required to pay for all fire and emergency services rendered to them by the city because they pay no taxes to the city. Viewed in *toto*, we conclude, based upon *Sloan* and *Childs*, that there is no equal protection violation, because residents and non-residents are paying for all of the services rendered.

Finally, the insurance company contends that the city ordinance violates State statutes regarding motor vehicle accidents. The ordinance does not appear to attempt to circumvent or change any of the State law regarding motor vehicle accidents. Nor do any of the statutes appear to limit a municipality's ability to collect a user fee for fire and emergency medical services rendered by the municipality in the event of a motor vehicle accident. In fact, as noted early, Section 4-21-10 specifically authorizes a city to collect a user fee for fire protection and emergency medical services. Therefore, we conclude that it is very unlikely a court would conclude that the city ordinance violates State law regarding motor vehicle accidents.

Conclusion

Accordingly, we agree with your conclusion expressed in your recent letter that the Ordinance in question is valid. We advise that the City of Hardeeville's ordinance which imposes a user fee on both non-residents as well as residents (to the extent municipal taxes do not pay for such services) is authorized by State statute as a valid municipal power. In our opinion, the Ordinance is neither unconstitutional, nor a violation of State law regarding motor vehicle accidents.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General