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HENRY MCMASTER
ATTORNEY GENERAL

June 30, 2006

The Honorable Gerald D. Schuster
Mayor, Town of Hollywood
Post Office Box 519
Hollywood, South Carolina 29449

Dear Mayor Schuster:

We received your letter requesting an opinion from this Office as to City of Charleston's obligation to provide water and sewer services to the Town of Hollywood. In your letter, you informed us that Charleston Water Works is a public service company of the City of Charleston that "provides water and wholesale sewer services to the Town of Hollywood, neighboring municipalities and unincorporated areas in the county of Charleston." You ask whether Charleston Water Works "can arbitrarily and capriciously limit the wholesale sewer services it provides to the Town of Hollywood, and simultaneously increase services to selected areas in the City of Charleston?"

Law/Analysis

Article VIII, section 9 of the South Carolina Constitution (1976) sets forth legislative authority over municipalities.

> The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law; provided, that not more than five alternative forms of government shall be authorized.

S.C. Const. art. VIII, § 9. As part of the Home Rule Amendments, the General Assembly adopted section 5-7-60 of the South Carolina Code (2004). This statute provides, in pertinent part:

> Any municipality may perform any of its functions, furnish any of its services, . . . and make charges therefor 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, ...

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S.C. Code Ann. § 5-7-60 (emphasis added). Prior to the enactment of section 5-7-60, the General Assembly adopted numerous provisions dealing with the supply of water and sewer service by a municipality beyond its corporate limits. Section 5-31-890 of the South Carolina Code (2004), dealing with the supply of sewage services states:

> All municipalities in this State owning, controlling, leasing or planning to construct a system of sewage disposal . . . , may, through proper officials, commissioners of public works, sewer commissions or any of them or like bodies, enter into contracts and agreements with persons or political subdivisions outside the corporate limits of such municipalities, whether contiguous thereto or not, for the construction, maintenance, operation, improvement, leasing, controlling or furnishing the use, benefits and facilities thereof upon such terms and at such rates and charges as may be fixed by the contract or agreement between the parties when, in the judgment of the proper officials, commissioners of public works, sewer commissions, or any of them or like bodies, as the case may be, it is for the best interest of the city, town or municipality so to do. But no such contract or agreement shall be for a period exceeding thirty years from the effective date thereof.

(emphasis added). Section 5-31-1910 of the South Carolina Code (2004), similar to section 5-31-890, but pertaining to water and light services, states:

> Any city or town in this State owning a water or light plant may, through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.

(emphasis added). In addition to the provisions cited above, we also note several other provisions that deal with the extension of municipal services beyond a city's limits. Section 5-31-1520 of the South Carolina Code (2004) provides authority for a city or town to extend it services beyond its limits as long as both water and sewer are extended. Section 5-31-1710 specifically deals with municipalities extending water and sewer services if they have populations between 3,000 and 4,000

and section 5-31-1920 of the South Carolina Code (2004) contains special provisions for cities with populations over 70,000 that wish to provide services outside their city limits.

In our review of the statutes above, we keep in mind the general rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). Words "must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Initially, in our reading of the above statutes, we find no provision imposing a duty on a municipality to provide water and sewer services to nonresidents. Furthermore, sections 5-7-60, 5-31-890, and 5-31-1910 quoted above, as well as those other statutes cited above, employ the term "may" in reference to the municipality's authority to enter into contracts with nonresidents. The plain and ordinary meaning of this term, as determined by our Supreme Court, indicates such actions are permissive, rather mandatory. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 426, 593 S.E.2d 462, 468 (2004) (finding statutory provisions using the term "may" do not impose "a duty on City to provide sewer service to all residents if it provides such service to any."). Thus, these statutes indicate the Legislature's intent to authorize, but not require, a municipality to contract with a person outside its corporate limits to provide water and sewer services.

Although we did not discover any South Carolina cases specifically addressing a municipality's obligation to provide water and sewer services to nonresidents, we uncovered several cases addressing a municipality's ability to charge nonresidents and residents different rates. Although, not directly on point, these decisions allude to the Court's understanding that municipalities are not obligated, absent a contract, to provide such services to nonresidents.

In Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911), our Supreme Court considered a case that involved a plaintiff who was not a resident of the city, but who received water from the city. The plaintiff requested the Court enjoin the City of Columbia from cutting off his water supply and from charging him "exorbitant and unreasonable" rates. Id. at 569, 70 S.E. at 297. The Court considered the statutes conferring authority on cities to furnish water to nonresidents, but found "the making of the contract and the terms, rates, and charges are left entirely to the discretion of the municipal authorities, and the interest of the municipality is the sole factor to be considered in deciding whether the contract shall be made, and if so, on what terms, and for what period, not exceeding two years." Id. at 571, 70 S.E. at 298. Accordingly, the Court held "the city was under no public duty to furnish water to the plaintiff at reasonable rates or to furnish it at all, and to obtain the injunction the plaintiff must show that the city is about to violate its contract with him." Id. (emphasis added).

More recently, in Sloan v. City of Conway, 347 S.C. 324,329, 555 S.E.2d 684, 686 (2001), our Supreme Court considered the similar issue of the validity of an ordinance allowing the City of Conway to charge nonresidents higher water rates than residents. The Court considered both sections 5-7-60 and 5-31-1910, cited above, and determined: "Reasonably construed, the ownership requirement of § 5-31-1910 simply ensures a municipality's ability to provide water to the persons with whom it contracts." The Court cited Childs for the proposition that "[a]ny right a nonresident has arises only by contract." Id. at 330, 555 S.E.2d at 686. Based on this analysis, the Court determined the City of Conway was under no duty to charge reasonable rates, other than by agreement. Id. at 331, 555 S.E.2d at 687.

In addition to the cases cited above, this Office addressed the issue of whether a municipality may profit from providing water to a nonresident. Op. S.C. Atty. Gen., February 5, 1976. Citing Childs, we concluded: "A nonresident purchaser of water from a municipality has only those rights set forth or necessarily implied from the contract to sell and furnish water and the nonresident has no rights beyond the contract." Id.

Based on the authorities cited above, it is our opinion that absent a contract mandating a municipality provide water and sewer services to a nonresident, we find no legal authority requiring the municipality to provide such services. Thus, the City of Charleston is not required, unless mandated by contract, to provide water or wholesale sewer services to the Town of Hollywood.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General