



HENRY McMASTER
ATTORNEY GENERAL

December 3, 2008

The Honorable B. R. Skelton
Member, House of Representatives
2962 Walhalla Highway
Six Mile, South Carolina 29682

Dear Representative Skelton:

We understand that you desire an attorney general's opinion regarding the imposition of sewer fees by a county on county residents who do not receive sewer service. In your letter, you state:

During the past six months, several constituents in the Town of Six Mile have expressed concerns about having to pay a county sewer fee without the benefit of a county sewer system. Under what authority, if any, may Pickens County impose a sewer fee to the residents of the Town of Six Mile? If Pickens County does have authority to impose a sewer fee to the residents of the Town of Six Mile, then may it do so without also providing the benefit of a sewer system?

Law/Analysis

Section 4-9-30 of the South Carolina Code (1986 & Supp. 2007) designates specific powers afforded to counties. Included in these power is the authority to levy uniform service charges and the ability to use such fees to provide for sewage collection and treatment. S.C. Code Ann. § 4-9-30(5) (Supp. 2007). Accordingly, we believe the Pickens County (the "County") generally has the authority to impose sewer fees. However, as the South Carolina Supreme Court noted in Brown v. County of Horry, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992), section 4-9-30(5) "does not specify the amount of such fees or the persons upon whom they can be imposed. These limitations are governed by the requirements of equal protection and reasonableness." Thus, our Supreme Court developed the following four-prong test to determine whether a fee is valid as a uniform service charge:

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(1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

C.R. Campbell Const. Co. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437 (1997) (citing Brown, 308 S.C. 180, 417 S.E.2d 565). The first prong of this test demonstrates the Court's view that in order for a service charge to be valid, it must provide some benefit to the payer of the charge. The Court in Brown emphasized this requirement in stating: "A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge." Brown, 308 S.C. at 185, 417 S.E.2d at 568.

In addition to a county's authority to levy fees pursuant to section 4-9-30, section 6-15-60 of the South Carolina Code (2004) specifically authorizes governmental entities, which pursuant to 6-15-10 of the South Carolina Code (2004) includes counties, to impose sewer charges. This provision states:

The General Assembly confirms the right of any governmental entity to impose upon all those to whom sewer service is rendered, (a) a sewer service charge therefor, which may, in the discretion of its governing body, be sufficient to provide for all or any part of the cost of operating and maintaining the sewer facilities and to provide debt service on bonds or other obligations of the governmental entity issued to provide any type of sewer collection, disposal, or treatment service, and (b) a sewer connection charge, or connection fee or tapping fee designed to adequately reimburse the governing body for effecting the connection to provide sewer service.

S.C. Code Ann. § 6-15-60 (emphasis added). Thus, while specifically allowing counties to impose sewer service charges, this provision requires that those required to pay the charge receive sewer service.

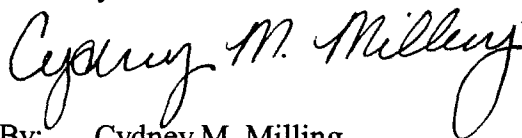
Regardless of whether the County receives its authority to impose sewer service fees on its residents pursuant to section 4-9-30 or section 6-15-60, those paying the fee must at a minimum receive some benefit from paying the charge. According to your letter, residents of the Town of Six Mile (the "Town") do not receive the benefit of the County sewer system. We are not aware of what authority the County is relying on to collect such a fee from the Town's residents. However, if the County is relying on either its general authority to impose a fee pursuant to section 4-9-30 or its

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specific authority pursuant to section 6-15-60, we do not believe the County may impose such a fee without providing a benefit, particularly sewer service, to the Town's residents.

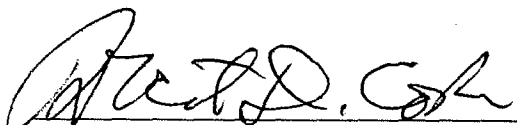
Very truly yours,

Henry McMaster
Attorney General



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