



ALAN WILSON  
ATTORNEY GENERAL

June 11, 2013

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

Dear Representative Moss:

Attorney General Alan Wilson has referred your letter of February 11, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

**Issue:** May a nonprofit water company provide a month of free water to its residential customers but not to its business customers?

**Law/Analysis:**

After reviewing our prior opinions, we did not find any prior opinions directly on point. It is this Office's longstanding policy (as it is the courts') to defer to the administrative agency charged with the regulation concerning the subject matter. As this Office stated in a previous opinion, "as a general matter, it is well recognized that administrative agencies possess discretion in the area of effectuating the policy established by the Legislature in the agency's governing law. As our Supreme Court has recognized, 'construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.' Op. S.C. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C.Cir. 1984). Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, we defer to that agency's construction." Op. S.C. Atty. Gen., 2006 WL 269609 (January 20, 2006). Thus, after checking with the South Carolina Public Service Commission, we were told it is the duty of the Office of Regulatory Staff (pursuant to S.C. Code Section 58-4-50(A)(5)) to investigate all complaints and questions concerning issues such the one you presented. South Carolina Code Section 58-4-50(A)(5) provides that:

A) It is the duty and responsibility of the [Office of] regulatory staff to:

...

5) investigate complaints affecting the public interest generally, including those which are directed to the commission, commissioners, or commission employees, and where appropriate, make recommendations to the commission with respect to these complaints;

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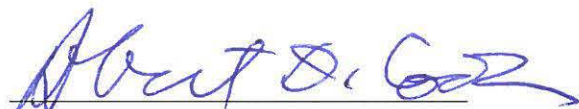
Therefore, we suggest first checking with the Office of Regulatory Staff and following their interpretation of your question. While this Office could opine on what it believes is the proper interpretation of the law, it is the policy of this Office to defer to the appropriate regulating agency's interpretation first.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General