

The State of South Carolina

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July 24, 1986

The Honorable James E. Bryan, Jr.
Senator, District No. 9
Post Office Box 756
Laurens, South Carolina 29360

Dear Senator Bryan:

By your letter of June 19, 1986, you have asked that this Office address the constitutionality of a situation whereby persons living outside the City of Laurens are being served by the Commission of Public Works of Laurens, but those persons are not permitted to participate in the election of commissioners. You have advised that the persons within the extra-territorial service area pay for water, sewer, and gas services but are not being taxed as the citizens of Laurens are.

Various sections of the Code of Laws of South Carolina permit municipalities to provide services to persons outside the municipal limits. The general power is granted in Section 5-7-60 of the Code, which 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 [Emphasis added.]

Specific authority for extending water and sewer lines beyond a municipality is found in Sections 5-31-1510, -1520, -1710, and -1910, among others. A review of these various Code sections makes it clear that such extension is achieved by contract or

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agreement between the individual or other party to be served and the municipality which will provide the agreed-upon services.

Commissioners of public works are selected by the electors of a given municipality pursuant to Section 5-31-210 et seq. of the Code. Though the commission may extend its services outside the municipality's boundaries, there is no provision permitting those being served outside the boundaries to vote on the commissioners. This is the practice which you are questioning.

The most common challenge to extension of services outside municipal limits has been that of taxation without representation; equal protection considerations have also been raised. However, it appears that challenges on these grounds have not been generally successful. See cases collected in "The Constitutionality Of the Exercise of Extraterritorial Powers by Municipalities," 45 U. Chicago L. Rev. 151 (1977), enclosed. It would appear, at least facially, that since no taxes are being imposed on property owners outside the municipality, there is no taxation without representation. Cf., City of Prichard v. Richardson, 17 So.2d 451 (Ala. 1944); Atlantic Oil Company, Inc. v. Town of Steele, 214 So.2d 331 (Ala. 1968).

One of the cases discussed in the enclosed law review article has subsequently been decided by the United States Supreme Court. In Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978), it was argued that a municipality's exercise of police powers over residents who lived outside the city but within a three-mile police jurisdiction, without extending the right to vote to those residents, violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Within the police jurisdiction, a municipality was authorized to exercise police, sanitary, and business-licensing powers; the exact nature of the powers granted depended upon the size of the municipality.

In finding no requirement that the right to vote be extended to those outside the municipality but within the police jurisdiction, the Supreme Court stated that

[n]o decision of this Court has extended the "one man, one vote" principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions. On the contrary, our cases have uniformly recognized

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that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its border. [Citations omitted.]

439 U.S. at 68-69, 58 L.Ed.2d at 301. The Court summarily dismissed the due process challenge and determined that the statutes granting extraterritorial powers bore some rational relationship to legitimate state purposes, thus dismissing the argument of disparate treatment in not extending the right to vote to persons residing outside the municipality but within the police jurisdiction. A copy of the decision is enclosed herewith.

We must therefore advise that provision of services outside the corporate limits of a municipality without extending the right to vote to those nonresidents receiving services has withstood a variety of constitutional challenges through the years. Based upon the law which we have located and enclosed herewith, we can identify no constitutional problem with the situation as described to this Office where persons outside the City of Laurens receive services from the Commission of Public Works but are not permitted to vote for the commissioners thereof.

With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

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