1983 WL 182086 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 1, 1983

***1 SUBJECT: Public Utilities; Statutes; Statutory Construction**

The twelve-month period provided in Sections 58-5-240(F), 58-9-540(D) and 58-27-870(E) of the South Carolina Code of Laws (1976), as amended by Act No. 138 of 1983, commences to run from the date a schedule was last filed with the Public Service Commission.

General Counsel
South Carolina Public Service Commission

DISCUSSION:

On June 15, 1983, the Governor signed into law Act No. 138 which changes certain procedures previously used in rate making hearings before the South Carolina Public Service Commission. Among the changes is a requirement that a twelve-month period elapse between the last filing of a rate schedule and any new filing. A question has been raised as to the computation of this twelve-month period during the first year of operation of Act No. 138. Section 58-5-240(F) of Act 138 provides with regard to gas, heat, water, sewerage collection and disposal, utilities and street railway companies that:

After the date the schedule is filed with the Commission, no further rate change request under this section may be filed until twelve months have elapsed from the date of the filing of the schedule, provided, however, this section shall not apply to a request for a rate reduction. (Emphasis added.)

Similar provisions are made by Section 58-9-540(D) with regard to telephone utilities and by Section 58-27-870(E) with regard to electrical utilities.

QUESTION:

Does the twelve-month period provided for in Sections 58-5-240(F), 58-9-540(D) and 58-27-870(E), of the 1976 Code, as amended, commence on the date of the utility's last schedule filing or on the effective date of Act No. 138, i.e., June 15, 1983?

OPINION:

The twelve-month period commences on the date of the last rate schedule filing. Sections 58-9-240(F), 58-9-540(D) and 58-27-870(E) are clear and unambiguous in so providing.

A statute is open to construction only where the language used therein requires interpretation or may reasonably be considered ambiguous. Thus, where no ambiguity appears, it is presumed conclusively that the clear and explicit terms of a statute express the legislative intention. A plain and unambiguous statute is to be applied, and not interpreted, since such a state speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity. 73 Am.Jur.2d, Statutes, § 194 (1974); see, Jones v. S. C. State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Applying the literal terms of the statute, a utility which, for example, filed a rate schedule on January 1, 1983, cannot file another schedule until January 2, 1984.

Moreover, computing the twelve-month period from a date occurring before the effective date of Act 138 does not constitute a retroactive application of the law.
[A] statute does not operate retroactively merely because it relates to antecedent events, or because part of the requisites of its action is drawn from time antecedent to its passing, but is retroactive only when it is applied to rights accrued prior to its enactment. 82 C.J.S., Statutes, § 412 (1953).

***2** Although our research revealed no court decisions dealing with our exact factual situation, there have been numerous cases illustrative of the principle of law quoted above. In City of Philadelphia v. Phillips, 179 Pa. Super. 87, 116 A.2d 243 (1955), the City of Philadelphia had assessed abutting landowners in 1953 for the costs of one-half of a nineteen feet widening project to Upsal Street. In 1951, the City had passed an ordinance restricting the amount of street improvements that could be assessed against landowners to eighteen feet. Prior to this ordinance, in 1943, thirty-three feet of the street had been paved with the cost of one-half (sixteen and one-half feet) being assessed against the abutting landowners. The landowners contended that they could only be assessed for one and one-half feet, since the City had previously assessed for sixteen and one-half feet in 1943. The City argued that counting assessments made before the enactment of the 1951 ordinance would be giving the ordinance a retroactive effect; therefore, they contended that an assessment for the full nine and one-half feet was proper. The Supreme Court of Pennsylvania held that the statute was not being applied retroactively merely because a part of the requisites for its action was drawn from a time antecedent to its enactment. Therefore, the Court held that the City could not assess landowners for the cost of more than one and one-half feet.

In order to apply retroactively, a statute must give the previous transaction to which it relates some different legal effect from that which it had under the law when it occurred. See, Holt v. Morgan, 127 C.A.2d 113, 274 P.2d 915 (1954). Sections 58-9-240(F), 58-9-540(D), and 58-27-870(E) have no legal effect on filings made prior to June 15, 1983; they only affect the right to make filings after June 15, 1983. Furthermore, to construe the twelve-month period to run initially from the effective date of Act No. 138, i.e., June 15, 1983, would in effect place a twelve-month moratorium on all rate filings. There is no indication that the Legislature intended such a result. Indeed, this would unduly penalize those utility companies which have been infrequent in their rate filings, by delaying their requests an additional twelve months even though their last rate filing may have been several years ago. It is apparent that Act No. 138 was not directed at those companies, but rather at companies which ‘stack’ their rate schedule filings, i.e., make new filings immediately after their last request is adjudicated or, in some instances, even before.

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