1980 WL 121127 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 26, 1980

***1** Honorable Caldwell T. Hinson
Member
House of Representatives
State House
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Hinson:
You have requested an opinion from this Office as to whether or not a municipality is authorized to charge different rates for water services to users outside the city limits from those charged users within the city limits. In my opinion, it is so authorized as hereinafter discussed.

Section 5-7-60, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, provides in part as follows:
Any municipality may perform any of its functions, furnish any of its services, except services of police officers, 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 any agency thereof . . ..

In Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1910), the South Carolina Supreme Court held that an earlier statute authorized the imposition of a water rate to users outside the city limits which was at least double that imposed upon city users. Moreover, the authorities apparently agree that:
The yardstick as to what are reasonable rates to be charged by a municipality to its residents for a supply or service furnished by its own utility is not usually applied to services supplied to those outside the territorial limits of the municipality. Proof that there is a rate differential in favor of the resident users does not establish prima facie that the nonresident rates are unreasonable. Thus, it is the general rule that a municipally owned waterworks supplying water outside its corporate limits may charge more for that service than it charges the users who reside within the corporate limits . . ..

The authorities also agree, however, that:
. . . rates to nonresident users are nevertheless required to be reasonable, not unreasonably high and discriminatory. A reasonable rate should include fair compensation for the services rendered.

The statement has been made that whatever rate a city fixes outside the city, it cannot thereafter arbitrarily change the rate so as to discriminate, or further discriminate, between nonresidents and city residents. Thus, an ordinance increasing rates to outside customers so as to be higher than those for resident customers, based entirely upon the location of the city limits, and enacted subsequent to the purchase of the utility from a private utility, and after the city had maintained for some time the same rate schedule for both residents and nonresidents, was held void as unreasonably discriminatory unless the city could show some reasonable basis for rate differentiation. 12 McQUILLIN MUNICIPAL CORPORATIONS § 35.37i (1971 revised vol.).

See, Texarkana v. Wiggins (Tex.), 246 S.W.2d 622.
With kind regards,

Karen LeCraft Henderson
***2** Senior Assistant Attorney General

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