

1979 WL 42830 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1979

***1** Michael L. M. Jordan, Esquire
Harvey, Battey, Macloskie & Bethea, P.A.
Post Office Box 5010
Hilton Head Island, South Carolina 29928

Dear Mr. Jordan:

In response to your letter concerning the authority of the Fripp Island Public Service District (District) entering into a supply agreement with a private water company to furnish water to the inhabitants of Harbor Island, South Carolina, my opinion is that the District may validly enter into such an agreement, provided that adequate and proper service to its existing customs is not thereby impaired.

Since 1895, the South Carolina Constitution has empowered '[a]ny county or consolidated political subdivision . . . ' to acquire and operate certain public utility systems, including water systems. [S.C.CONST. art. VIII, § 16](#). See, [Union v. Bd. of Comm'rs](#), 91 S.C. 248, 74 S.E. 496 (1912). This constitutional provision does 'not expressly or by necessary implication limit the service to individuals, firms, and private corporations situated within the corporate limits.' [Paris Mt. Water Co. v. City of Greenville](#), 110 S.C. 36, ___, 96 S.E. 545, 549 (1918); [City of Orangeburg v. Moss](#), 262 S.C. 299, 204 S.E.2d 377 (1974); [Sossamon v. Greater Gaffney Metropolitan Utilities Area](#), 236 S.C. 173, 113 S.E.2d 534 (1960). Parenthetically, § 5-31-1910 of the [South Carolina Code](#) explicitly authorizes '[a]ny city or town in this State owning a water or light plant . . . [to] enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town . . . ' [S.C.CODE ANN. § 5-31-1910 \(1976\)](#). Moreover, as noted in your letter, the District's enabling legislation permits the District commissioners to sell water to the inhabitants of lands located outside the district but 'contiguous to the main supply lines from the wells to the district.' Act No. 517, 1965 S.C. Acts 989. Nonetheless, it should be emphasized that there exists no duty to supply non-residents with water. [Sossamon v. Greater Gaffney Metropolitan Utilities Area](#), 236 S.C. 173, 113 S.E.2d 534 (1960); [Childs v. City of Columbia](#), 87 S.C. 566, 70 S.E. 296 (1911).

The application of these principles to the situation at hand clearly supports the conclusion that the District can validly enter into an agreement with a private water company to supply water to persons who reside outside the district. However, two questions remain. First, is Harbor Island contiguous with the district? Second, can the District provide only its excess supplies to non-residents?

The requirement that the non-residents be contiguous to the supplying entity is well established. [S.C.CODE ANN. § 5-31-1910 \(1976\)](#). [Sossamon v. Greater Gaffney Metropolitan Utilities Area](#), *supra*. 1965-66 Op.S.C. Atty.Gen. 203. Arguably, since the non-residents live on an island, the requirement should be somewhat more broadly construed and, most probably, the close proximity of the islands and the fact that the District's water lines actually cross Harbor Island should be sufficient to satisfy the contiguity requirement.

***2** The relevant South Carolina law does not explicitly restrict non-resident sales to excess water. However, since there is a duty to supply residents with water, while no such duty exists with respect to non-residents, an agreement to supply water to non-residents cannot interfere with the pre-existing duty to supply residents. Moreover, [South Carolina Code § 58-5-710](#) requires utility companies to provide 'adequate and proper service to its customers . . . ' [S.C.CODE ANN. § 58-5-710 \(1976\)](#). Therefore, the amount of water that can be supplied to non-residents is not restricted, so long as that supply does not interfere with the duty to supply resident customers.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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