

1976 S.C. Op. Atty. Gen. 43 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4246, 1976 WL 22866

Office of the Attorney General

State of South Carolina

Opinion No. 4246

February 5, 1976

***1 A nonresident purchaser of water from a municipality has only those rights set forth or necessarily implied from the contract to sell and furnish water and the nonresident has no rights beyond the contract.**

Member

House of Representatives

District No. 112

You advise that a municipality is furnishing water to a person and location outside of its corporate limits for a charge that results in a profit to the municipality. That profit is used to offset expenses incurred by the municipality in furnishing services to residents and property with the municipality thereby decreasing the taxes levied and imposed upon such residents and property. Your inquiry concerns the rights of the nonresident by reason of such charges.

The Constitution, in Article 8, Section 5, prior to amendment in 1972 and 1973 provided that:

‘Cities and towns may acquire * * * and may operate waterworks systems * * * and may furnish water * * * to individuals, firms and private corporations for a reasonable compensation * * *.’

The above does not limit the municipality to furnishing water to its residents. *Childs v. City of Columbia*, 87 S. C. 566, 70 S. E. 296; *Parris Mountain Water Co. v. City of Greenville*, 110 S. C. 36, 96 S. E. 545; *Sossamon v. Greater Gaffney Metropolitan Utilities Area*, 236 S. C. 173, 113 S. E. 2d 534.

The General Assembly has, in Section 59–531, provided authority for a municipality to enter into a contract to furnish water to certain persons outside the municipality. The Court, in the *Sossamon case*, supra, recognized that a profit could be realized by the municipality in the sale of water to nonresidents.

‘The Act imposes upon the City of Gaffney the duty of furnishing water to those outside its corporate limits. Other municipalities may choose not to do so. This obligation placed upon the city must be discharged without profit. *All other municipalities are at liberty to charge ‘reasonable compensation’ and make a profit on utility service outside their corporate limits.* Under the Act the right to contract with outside customers given by Section 59–531 to all municipalities is denied to the City of Gaffney. It has no voice in fixing the rates to be charged to such customers. * * *.’ (Emphasis added)

The amendment to Article 8, Section 5, is found in Article 8, Section 16 and the language of the amended section is broader in scope than existed prior to amendment.

A municipality therefore possesses authority to contract to sell water to nonresidents for a profit and the rights of any nonresident purchaser are those under the contract.

‘Assuming that the city authorities had the power to contract with the plaintiff to furnish water for his residence and other houses, and that the duty devolves on them of contracting for the sale of any excess of the city’s water supply beyond the municipal needs and the needs of its inhabitants, it is, nevertheless, perfectly obvious that the duty to sell the excess of its water supply did not import an obligation to make a contract with any particular person at a reasonable price; but, on the contrary, did import an obligation to sell its surplus water for the sole benefit of the city at the highest price obtainable. It was a duty not owed

to outsiders, but exclusively to inhabitants and taxpayers of the city. *It follows that the plaintiff as a mere nonresident had no rights whatever against the city, except such as he may have acquired by contract.* In other words, the city was under no public duty to furnish water to the plaintiff at reasonable rates or to furnish it at all, and to obtain the injunction the plaintiff must show that the city is about to violate its contract with him.’ *Childs v. City of Columbia*, 87 S. C. 566, 70 S. E. 296. (Emphasis added)

*2 The rights of a nonresident purchaser of water from a municipality are those set forth or necessarily implied from the contract to sell and furnish the water.

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