ALAN WILSON
ATTORNEY GENERAL

July 20, 2018

The Honorable Glenn G. Reese
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Reese:

Attorney General Alan Wilson has referred your letter to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter)**:**
"[W]hether or not it is legal for Count[ies] to charge a sewer fee on homes and cars that have owners who are not on a sewer line, but have septic tanks."

Law/Analysis:
This Office answered a similar question in an opinion dated December 3, 2008 in which we were asked about "the imposition of sewer fees by a county on county residents who do not receive sewer service." See Op. S.C. Att'y Gen., 2008 WL 5476554 (S.C.A.G. December 3, 2008). In that opinion this Office concluded that the residents must receive some benefit for paying a sewer charge. Quoting from the opinion we concluded:

> Regardless of whether the County receives its authority to impose sewer service fees on its residents pursuant to section 4-9-30 or section 6-15-60, those paying the fee must at a minimum receive some benefit from paying the charge. According to your letter, residents of the Town of Six Mile (the "Town") do not receive the benefit of the County sewer system. We are not aware of what authority the County is relying on to collect such a fee from the Town's residents. However, if the County is relying on either its general authority to impose a fee pursuant to section 4-9-30 or its specific authority pursuant to section 6-15-60, we do not believe the County may impose such a fee without providing a benefit, particularly sewer service, to the Town's residents.

Op. S.C. Att'y Gen., 2008 WL 5476554, at *2 (S.C.A.G. Dec. 3, 2008). Thus, we affirm our prior opinion and offer the following analysis to answer your question:

I. Constitutional and Statutory Authority for Counties Regarding Sewer Fees and Sewer Connection Fees[1]

First and foremost, let us look to the Constitutional authority granted to counties regarding sewer fees. The South Carolina Constitution states regarding bond indebtedness that:

> No law shall be enacted permitting the incurring of bonded indebtedness by any county for sewage disposal or treatment, fire protection, street lighting, garbage collection and disposal, water service or any other service or facility benefitting only a particular geographical section of the county unless a special assessment, tax or service charge in an amount designed to provide debt service on bonded indebtedness or revenue bonds incurred for such purposes shall be imposed upon the area or persons receiving the benefit therefrom. (1976 (59) 2217; 1977 (60) 90.)

S.C. Const. art. X, § 12 (emphasis added). Additionally, Article VIII, Section 15 requires the consent of the local governing body, which includes counties, before the General Assembly may pass a law authorizing the right to lay sewer mains for any purpose. S.C. Const. art. VIII, § 15. Section 16 authorizes counties to construct and purchase sewer systems after a majority vote of the electors. S.C. Const. art. VIII, § 16. It states, in relevant part, that:

> Any county or consolidated political subdivision created under this Constitution may, upon a majority vote of the electors voting on the question in such county or consolidated political subdivision, acquire by initial construction or purchase and may operate water, sewer, transportation or other public utility systems and plants other than gas and electric; *provided* this provision shall not prohibit the continued operation of gas and electric, water, sewer or other such utility systems of a municipality which becomes a part of a consolidated political subdivision.

S.C. Const. art. VIII, § 16 (1895 Const.).

Statutory law regarding counties states that:

> [E]ach county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:
>
> ...
> (5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; ...

[1] Please note that while this section and the opinion offer authority, it is intended to be comprehensive not exclusive.

S.C. Code Ann. § 4-9-30 (1976 Code, as amended) (emphasis added). While this statute grants authority for sewage collection and treatment, it does not specifically authorize sewer tap fees. For example, Act No. 687 of 1969 specifically authorizes the special purpose district to "(24) To require the payment of tap-in fees when sewage lines are made available even though a property owner may not choose to tap to the sewer." Op. S.C. Att'y Gen., 2012 WL 889088 (S.C.A.G. February 29, 2012) (emphasis added). Likewise, the law authorizes special purpose districts and other political subdivisions to charge for "tap" fees when it states that:

> The General Assembly confirms the right of any governmental entity to impose upon all those to whom sewer service is rendered, (a) a sewer service charge therefor, which may, in the discretion of its governing body, be sufficient to provide for all or any part of the cost of operating and maintaining the sewer facilities and to provide debt service on bonds or other obligations of the governmental entity issued to provide any type of sewer collection, disposal, or treatment service, and (b) a sewer connection charge, or connection fee or tapping fee designed to adequately reimburse the governing body for effecting the connection to provide sewer service.

S.C. Code Ann. § 6-15-60 (1976 Code, as amended) (emphasis added). The same chapter defines "sewer connection fee" or "connection fee" or "tapping fee" as "the charge imposed by any governing body upon any person for providing a tap in or connection to any sewer facilities." S.C. Code Ann. § 6-15-10(10). The General Assembly defined "sewer connection charge" for special purpose districts and public service districts as "the charge imposed upon property owners as a condition to authorizing them to connect to and discharge sewage into any public sewer system; [.]" S.C. Code Ann. § 6-11-1220(f). It also defines a "sewer service charge" as "any charge imposed by any municipality, county, or special purpose district for services rendered in the collection, disposal, or treatment of sewage." S.C. Code Ann. § 6-15-10(9); see also Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987). Within that same chapter, a "governing body" is defined to include ... in the case of a county, the governing council or board thereof" so the plain language of the statute demonstrates the General Assembly's intent to include a county within the definition of a local governing body in Article 3. S.C. Code Ann. § 6-15-10. Furthermore, if there were any question left as to the applicability of Chapter 15 of Title 6 to counties, South Carolina Act No. 49 § 2 of 1986 includes within it the intent of the General Assembly to make Chapter 15 of Title 6 applicable to counties.

Nevertheless, we would be remiss if we did not point out that the charges authorized by South Carolina Code Ann. § 6-15-60 are only applicable to those of "whom sewer service is rendered... ." S.C. Code Ann. § 6-15-60 (emphasis added) (1976 Code, as amended). Black's Law Dictionary defines render as:

> render *vb.* (14c) 1. To transmit or deliver <render payment>. 2. (Of a judge) to deliver formally <render a judgment>. 3. (Of a jury) to agree on and report formally <render a verdict>. 4. To pay as due <render an account>.

RENDER, Black's Law Dictionary (10th ed. 2014). It is apparent that counties may impose charges on those who are provided sewer service, however, your question of whether a county has authority to impose any sewer charges or sewer connection fees on one who does not use the sewer service remains.

South Carolina Code of Law also authorizes counties to operate sewer systems when it states that:

> (A) The governing body of each county of the State is authorized to acquire, construct, improve, enlarge, operate and maintain, within such county, facilities to provide water for industrial and private use and facilities for the collection, treatment and disposition of sewage, including industrial waste. No such facilities shall be provided by the county within the territory of any special purpose district or authority existing on March 7, 1973, authorized to provide such facilities or within the corporate limits of any incorporated municipality without the consent of the governing body of such municipality, special purpose district, or authority, as the case may be. Nothing herein contained is intended to authorize the levy of taxes.
> (B) Every county governing body is authorized to adopt regulations with respect to the use of its water and sewage facilities, including regulations requiring connection thereto of properties to which such facilities are available.
> (C) Every county governing body is authorized to place into effect and revise from time to time a schedule of rates and charges for the use of its water or sewer facilities.

S.C. Code Ann. § 44-55-1410 (1976 Code, as amended). Moreover, the law authorizes a local governing body to "charge and collect a service or user fee" whose revenue "imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid." S.C. Code Ann. § 6-1-330 (emphasis added).[2] However, even if counties have authority to charge a sewer service charge and a sewer connection fee, they cannot violate other Constitutional principles and case law.

II. Sewer Fees v. Taxes

In 1984 the Supreme Court of South Carolina ruled that an assessment for sewer denied equal protection guaranteed by the State and Federal Constitutions to those who did not receive sewer service or benefit from the new system but had to pay for it. See Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). The case quoted a 1979 case that distinguished between taxes and assessments when it stated that:

> To be an assessment, there must be a benefit and, if none, it is a tax. Taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefited by the proposed improvements. *Celanese Corp. v. Strange,* 272 S.C. 399, 252 S.E.2d 137 (1979).
> ...
> We recognize the proposed system will improve sanitary conditions in the unincorporated area which would enhance property values but disagree with Appellant's claim that this generalized benefit is sufficient to make the surcharge an assessment. *Wright v. Proffitt,* 261 S.C. 68, 198 S.E.2d 275 (1973), *Mills Mill v.*

[2] Please read the full statute for the requirements and limitations.

> *Hawkins,* 232 S.C. 515, 103 S.E.2d 14 (1957). To be an assessment, the improvement must confer a benefit on property distinguishable from the general benefit enjoyed by surrounding areas. *Wright, supra.* The benefit of improved sanitary conditions would inure to all 269,735 residents of Richland County, including 101,208 residents of the City of Columbia, 42,642 people in East Richland as well as those in the unincorporated area who have private wells and septic tanks, none of whom are required to pay the surcharge. We hold the asserted benefit is general in nature and cannot be labeled an assessment. As a tax it violates Article X, Section 6 of the South Carolina Constitution which requires county taxes to be uniformly levied.

Casey v. Richland Cty. Council, 282 S.C. 387, 389-390, 320 S.E.2d 443, 444 (1984). Thus, the South Carolina Supreme Court clarified in Casey that taxes should be imposed equally on all properties while assessments should only be on those properties benefitted. See also United States v. City of Huntington, W.Va., 999 F.2d 71, 74 (4th Cir. 1993) ("[u]ser fees are payments for a government-provided benefit. Taxes, on the other hand, are "enforced contribution[s] for the support of government.") (quoting United States v. La Franca, 282 U.S. 568, 572, 51 S.Ct. 278, 280, 75 L.Ed. 551 (1931) ("A 'tax' is an enforced contribution to provide for the support of government;")).[3] Contrastingly in 1988, the South Carolina Supreme Court upheld a county ordinance creating a tax to pay for a county-wide sewer system because of its uniformity. See Yeargin v. Wicker, 295 S.C. 521, 369 S.E.2d 844 (1988). Quoting the Court in Yeargin, it stated that:

> In S.C. Code Ann. § 4–9–30(5) (1986) the General Assembly has authorized counties to assess taxes and to make appropriations for county functions and operations, specifically including sewage collection and treatment. This provision further allows the creation of special tax districts without a referendum, provided the taxes are levied uniformly within the entire unincorporated area.

Ex parte Yeargin, 295 S.C. 521, 524, 369 S.E.2d 844, 845 (1988). The Supreme Court of South Carolina explained it well when it stated that:

> The relevant statute delegating the General Assembly's property taxing power to the County pursuant to art. X, § 6 is § 4–9–30(5)(a), ...
> This subsection of § 4–9–30, like § 5–7–30, gives counties three powers with regard to property: (1) the authority to make assessments; (2) to levy ad valorem taxes; and (3) to impose uniform service charges. The funds generated under this statute must be used for the functions and operations of the county. That "uniform service charges" must relate to the ownership of real or personal property is apparent from the language of § 4–9–30(5)(a) itself and from art. X, § 6. *See also Ex parte Yeargin, supra.* While the language of § 4–9–30(5)(a) is not as explicit as that of § 5–7–30, the purposes of the § 4–9–30 and § 5–7–30 are identical, that is, to delineate the specific powers given to local governments. In both statutes the term "uniform service charges" is used only in conjunction with the power of local government to impose property-related charges, a power derived from art. X, § 6. It is unreasonable to believe the legislature intended the term "uniform service

[3] The IRS also issues information on fees versus taxes. See IRS CCA 201046010 (Nov. 19, 2010) (citing Valero Terrestrial Corporation v. Caffrey, 205 F.3d 130, (4th Cir. 2000)).

> charge" to have one meaning under § 5–7–30 and a different meaning under § 4–9–30(5)(a). Uniform service charges must be based upon the ownership of real or personal property, and are not an independent source of revenue raising. *See also Brown v. Horry County, supra* (approving uniform service charge on personal property in the county).

Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston, 320 S.C. 219, 231–34, 464 S.E.2d 113, 122 (1995) (emphasis added).

McQuillin states that:

> In determining whether a charge imposed by a municipality or a state or local board functions as a fee, rather than an invalid tax, there are two types of fees: user fees, where a fee is assessed for the use of the governmental entity's property or services; and regulatory fees, where a fee is assessed as part of government regulation of private conduct. User fees are payments given in return for a government provided benefit. Using this revenue raising device has become more common over the years for cash-strapped municipalities. A problem arises, however, when a municipality tries to avoid constitutional restrictions by calling a tax a user fee.

16 McQuillin Mun. Corp. § 44:24 (3d ed.) (footnotes omitted). This Office has also quoted the South Carolina Supreme Court on the issue of fees versus taxes stating that:

> The question of whether a particular charge is a tax depends on its real nature and not its designation. *Powell v. Chapman*, 260 S.C. 516, 197 S.E.2d 287 (1973); *Jackson v. Breeland*, 103 S.C. 184, 88 S.E. 128 (1915) (in distinguishing assessments from taxes the court held that courts will look behind mere words). In any doubtful case, however, the intent of the legislature as expressed in its characterization of the fee must be given judicial respect. *Emerson College v. City of Boston*, 391 Mass. 415, 462 N.E.2d 1098 (1984) (citing *Associated Indus., Inc. v. Comm'n. of Revenue*, 378 Mass. 657, 393 N.E.2d 812 (1979)).
>
> ...
>
> Although a service charge may possess points of similarity to a tax, it is inherently different and governed by different principles. A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge. A charge does not become a tax merely because the general public obtains a benefit. *See Robinson v. Richland County Council, supra; Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443(1984).
>
> Brown v. County of Horry. 308 S.C. 180, 184-185, 417 S.E.2d 565, 567-568 (1992).

Op. S.C. Atty. Gen., 2014 WL 3352176, at *6 (S.C.A.G. June 18, 2014) (quoting 2014 WL 1398601 (S.C.A.G. January 15, 2014)). In J.K. Construction v. Western Carolina Regional Sewer Authority, 336

S.C. 162, 519 S.E.2d 561 (1999), the South Carolina Supreme Court used the test detailed below as applied in Brown and C.R. Campbell Construction and ruled that a new account fee for a new sewer line or upgrading to a larger water line was a service charge and not a tax, so it did not need to apply uniformly to all residents because the customers paying received a special benefit, the proceeds were used for capital improvements not general funds and the fee was uniformly imposed based on anticipated water usage.

III. User Fees as Valid Uniform Service Charges

This Office has previously opined that the Supreme Court of South Carolina has developed a test for whether a fee is a valid uniform service charge. The test is whether:

1) the revenue generated is used to the benefit of the payers, even if the general public also benefits
2) the revenue generated is used only for the specific improvement contemplated
3) the revenue generated by the fee does not exceed the cost of the improvement and
4) the fee is uniformly imposed on all the payers.

Op. S.C. Att'y Gen., 2008 WL 5476554 (S.C.A.G. December 3, 2008) (emphasis added) (quoting C.R. Campbell Const. Co. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437 (1997) (citing Brown v. County of Horry, 308 S.C. 180, 417 S.C.2d 565 (1992). Thus, the Supreme Court prioritizes the benefit to the payer as the very first prong of the test, emphasizing the importance that the payer benefit from the charge. This Office has previously referenced McQuillin regarding whether or not user fees are valid charges when we stated that:

> In order to qualify as a valid user fee, it must normally meet three criteria.
>
> > [1] First, the fee must be charged in exchange for a particular government service which benefits the party paying the fee in a manner not shared by other members of society.
> > [2] Secondly, it must be paid by choice, in that the party paying the fee has the option of not utilizing the government service and thereby avoiding the charge.
> > [3] Finally, the charges collected must be to compensate the governmental entity providing the services for its expenses and not to raise revenues.
>
> User fees which have been approved include tolls, sewer fees, fees imposed by airport authority on car rental companies, landfill charges, transportation utility fees for street maintenance, utility fees for storm water management, and boat mooring fees. Fees for providing fire protection and other traditional core government services are usually considered taxes and are subject to constitutional limitations.

Op. S.C. Atty. Gen., 2014 WL 3352176, at *5 (S.C.A.G. June 18, 2014) (emphasis added) (quoting 16 McQuillin Municipal Corporations § 44.24 (3rd ed.)). Thus, even if a particular sewer fee is a user fee, it must still be valid must benefit the person or entity paying the fee.

IV. Fees v. Constitutional Considerations

Nevertheless, even if the fee passes the validity test as a uniform service charge, it cannot violate other laws such as the Contracts Clause within our State and Federal Constitutions. The United States Constitution prohibits the passage of any that impairs the obligation of contracts. U.S. Const. art. I, § 10, cl. 1. The South Carolina Constitution also prohibits laws impairing the obligation of contracts. S.C. Const. art I, § 4. This Office has previously opined regarding a test for whether the obligation of contracts are impaired with five parts developed by the Fourth Circuit. The test consists of the following elements:

(1) its emergency nature;
(2) its purpose to protect a broad societal interest, not a favored group;
(3) the tailoring of its remedial effect to its emergency cause;
(4) the reasonableness of its basic features; and
(5) its limited effect in temporal terms.

Op. S.C. Att'y Gen., 1996 WL 452776, (S.C.A.G. May 14, 1996) (quoting Garris v. Hanover Insurance Co., 630 F.2d 1001 (4th Cir. 1980)). The Office also previously opined that the "primary intent behind the drafting of the [Contracts] clause was to prohibit states from adopting laws that would interfere with the contractual arrangements between private citizens ... [s]pecifically, the drafters intended to inhibit the ability of state legislatures to enact debtor relief laws." Op. S.C. Att'y Gen., 1996 WL 452776 (S.C.A.G. May 14, 1996). Additionally, our South Carolina Supreme Court has opined that "[a] property owner does not have a protected property interest in connecting to a sewer line." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004) (citing Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000)). In the same case, the Court concluded that sewer service was not a fundamental right. Id.

Furthermore, any such fees must not violate the Contracts Clause. South Carolina Constitution Article I, Section 4 states that "[n]o bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be padded, and no conviction shall work corruption of blood or forfeiture of estate." S.C. Const. Art. I, § 4. Similarly, the United States Constitution states that "[n]o State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility." U.S.C.A. Const. Art. I § 10, cl. 1.[4] This Office has previously stated in opinions, the purpose of the Contract Clause in the U.S. Constitution exists to:

> "prevent[] the states from passing any legislation that would alleviate the commitments of one party to a contract or make enforcement of the contract unreasonably difficult. The primary intent behind the drafting of the clause was to prohibit states from adopting laws that would interfere with the contractual arrangements between private citizens. Specifically, the drafters intended to inhibit

> the ability of state legislatures to enact debtor relief laws. Those who attended the Constitutional Convention recognized that banks and financers required some assurance that their credit arrangements would not be abrogated by state legislatures." [Nowak, Constitutional Law (2d Ed. 1983), page 462.] While the emphasis of the Contract Clause of the federal Constitution was on contracts between private parties, the United States Supreme Court in deciding The Trustees of Dartmouth College v. Woodward. 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629 (1819), made it clear that the Contract Clause would prevent a state from abrogating contracts or agreements to which it was a party.

Op. S.C. Atty. Gen., 2012 WL 3611779 (August 9, 2012) (citing Op. S.C. Atty. Gen.. 1996 WL 452776 (May 14, 1996)). A 2012 South Carolina Supreme Court case discussed a test to establish a Contracts Clause violation asking:

> 1) whether there is a contractual relationship;
> 2) whether the change in the law impairs that contractual relationship; and
> 3) whether the impairment is substantial.

Harleysville Mut. Insur. Co. v. State, 401 S.C. 15, 28-29, 736 S.E.2d 651, 658 (2012) (quoting Hodges v. Rainey, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000) (citing Gen. Motors Corp. v. Romein, 503 U.S. 181, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992))). Thus, we believe a court would also use this test to determine if a law or ordinance regarding sewer costs would be a violation of the Contracts Clause.

Conclusion:

This Office affirms its December 3, 2008 opinion to the Honorable B.R. Skelton where we were asked about "the imposition of sewer fees by a county on county residents who do not receive sewer service" and concluded that the residents must receive some benefit for paying a sewer charge regardless of whether the county received its authority for the fee from South Carolina Code § 4-9-30 or § 6-15-60. See Op. S.C. Att'y Gen., 2008 WL 5476554 (S.C.A.G. December 3, 2008). Counties have authority "to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, ... sewage collection and treatment." S.C. Code Ann. § 4-9-30 (1976 Code, as amended) (emphasis added); see also S.C. Code Ann. § 44-55-1410; S.C. Const. art. VIII, § 16. This is power regarding property to (1) "make assessments; (2) levy ad valorem taxes; and (3) to impose uniform service charges" and "must be used for the functions and operations of the county." Hosp. Ass'n of S.C., Inc. v. County of Charleston, 320 S.C. 219, 231–34, 464 S.E.2d 113, 122 (1995). This Office generally interprets "sewage collection and treatment" to be authorization for a "uniform service charge" for sewer fees on those who own property on which the service is "rendered." S.C. Code Ann. § 6-15-60. While each "sewer fee" could be analyzed on a case-by-case basis to determine if it is valid, this Office believes generally a court will rule that a sewer fee in and of itself cannot be charged as a valid charge to those who receive no benefit. Id; Op. S.C. Att'y Gen., 2008 WL 5476554 (S.C.A.G. December 3, 2008); Hosp. Ass'n of S.C., Inc. v. County of Charleston, 320 S.C. 219, 231–34, 464 S.E.2d 113, 122 (1995); J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999); Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984); and pursuant to the use of "rendered" in § 6-15-

60.[4] Moreover, we believe that a court will generally find that sewer connection fees are a service charge and that they offer no benefit to those properties not using the sewer service, such as properties that already have a septic system or other alternative septic treatment system. As such, this Office believes a court will find that sewer connection fees cannot be imposed where they offer no benefit pursuant to the Supreme Court's ruling in Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). See also C.R. Campbell Const. Co. v. City of Charleston, 325 S.C. 235, 481 S.E.2d 437 (1997) (citing Brown v. County of Horry, 308 S.C. 180, 417 S.C.2d 565 (1992)). Additionally, charging a sewer fee and a sewer connection fee to properties that already have a contract for services for sewer treatment (either by septic system or other alternative septic treatment system) with a private third party could violate the State and Federal Constitutions' prohibitions against the impairment of contracts. U.S. Const. art. I, § 10, cl. 1; S.C. Const. art I, § 4. If you would like for us to analyze a particular fee, we are glad to do so in a follow-up opinion. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Solicitor General

[4] This Office distinguishes your legal question from that in N.C. Electric Membership Corp. v. White, 722 F.Supp. 1314 (D. S.C. 1989) because in that case the Fourth Circuit held that an election for ad valorem assessments in a special tax district did not deny due process for a nuclear power station who already had private water and sewer, nor was it a taking. This Office also distinguishes this opinion from Hagley Homeowner's Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority, 326 S.C. 67, 485 S.E.2d 92 (1997) and Ford v. Georgetown County Water & Sewer Dist., 341 S.C. 10, 532 S.E.2d 873 (2000), due to their specific factual circumstances.