1972 WL 25195 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 3, 1972

***1 Re: Water and Sewer Tap-on Fees**

Thomas O. Lawton, Jr., Esquire

Lawton and Myrick
Attorneys at Law
Allendale, South Carolina 29810

Dear Mr. Lawton:
We are in receipt of your letter of January 27, 1972, written in your capacity as City Attorney for the Town of Allendale.

In this letter you relate that the Town of Allendale, in addition to charging water and sewer tap on fees to new businesses and residences connecting up with the water and sewer systems, is charging purchasers of property with existing water and sewage connections such fees unless it is shown that within the past seven years, tap-on fees have been paid to the Town by a previous owner. While the Town has maintained its sewer system for many years, it bought the present water system only seven years ago and commenced at that time furnishing water service.

Your question is whether the practice of charging these tap-on fees to a new owner of property which is already connected to the water and sewer systems is valid.

Section 59–258, Code of Laws of South Carolina, 1962, states that a municipality after acquiring a water or sewer system may 'furnish water to persons for reasonable compensation and charge a minimum and reasonable sewage charge for maintenance or construction of such sewerage system within such city or town . . ..' Apparently, this statute is speaking of the water and sewer 'rates' and not tap-on fees. Section 3(1) of 1965 Act No. 349 (54 Stats. 614, 616) empowers city and town councils to place into effect and revise a schedule of 'sewer service and sewer connection charges' and Section 2(f) defines 'sewer connection charge' as one imposed upon property owners as a condition to authorizing them to connect to and discharge sewage into any public sewer system.' From your letter, the tap-on fees you are concerned with appear to be water and sewer connection fees and not 'rates' or 'service charges.'

Assuming the authority to make these tap-on charges, the question, in our opinion, is whether or not, as with rates, they have a basis that is reasonable, fair and non-discriminatory, or whether they are unreasonable, discriminatory or arbitrary. See McQuillan on Municipal Corporations, Section 35.37(b). One case has been found in Ohio which seems to hold that water and sewer tap-on charges established by municipal ordinances which are fair and reasonable and bear a substantial relationship to the cost involved provided the new services are valid. See Englewood Hills, Inc., v. Village of Englewood, 237 N. E. (2d) 621 (Ohio App., 1967). These involved were tap-on's being charged to property owners connecting on to municipal water and sewer systems for the first time.

This office does not feel that it is in a position to determine whether the practice of the Town of Allendale in charging water and sewer tap-on fees where connections already exist is justifiable or not. This could well be a factual question. We do have some question as to the statutory authority of a municipality to charge tap-on fees under the subject circumstances. As stated before, Section 59–248 appears to authorize the charging of 'rates' for water and sewer service and the authorization of Act No. 349 appear to be geared toinitial connections to a sewer system, not fees charged to subsequent owners after the connection is made.

Very truly yours,

***2** Robert W. Brown
Assistant Attorney General

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