

7934 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 30, 2005

The Honorable Jerry W. Peace
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, South Carolina 29648-0516

Dear Solicitor Peace:

In a letter to this office referenced the following situation:

An operator of a greenhouse has a part-time employee who is also employed by the Commission on Public Works. This employee, with at least the knowledge, if not at the request of the greenhouse operator, tampered with the water meter. This has resulted in the greenhouse operator not paying for water for his greenhouse for over 15 years. The estimated loss of revenue is between \$50,000 and \$170,000.

You cited the provisions of S.C. Code Ann. § 16-13-385 (2003) which provide that:

(A) It is unlawful for an unauthorized person to alter, tamper with, or bypass a meter which has been installed for the purpose of measuring the use of electricity, gas, or water. A meter found in a condition which would cause electricity, gas, or water to be diverted from the recording apparatus of the meter or to cause the meter to inaccurately measure the use of electricity, gas, or water or the attachment to a meter or distribution wire of any device, mechanism, or wire which would permit the use of unmetered electricity, gas, or water or would cause a meter to inaccurately measure the use is prima facie evidence that the person in whose name the meter was installed or the person for whose benefit electricity, gas, or water was diverted caused the electricity, gas, or water to be diverted from going through the meter or the meter to inaccurately measure the use of the electricity, gas, or water.

(B) A person who violates the provisions of this section for a first offense is guilty of a misdemeanor and, upon conviction, must be fined not more than

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five hundred dollars or imprisoned not more than thirty days. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

As you indicated, a first offense violation of such provision is a magistrate court offense. You have asked whether it would be possible to charge the greenhouse operator with larceny under the common law or by some other disposition.

As stated in a prior opinion of this office dated January 26, 2001, the common law definition of larceny is "...the felonious or trespassory taking (without proper authorization) and carrying away of the property of another with the intent to steal." As to your situation involving the tampering with of the water meter with the result of not paying for the water taken, it has been stated that

Water...impounded in mains and service pipes from which they are supplied to customers are the personal property of the municipality or private corporation owning the mains and pipes, and are the subject of larceny; hence, a person is guilty of the crime if he or she diverts such water...for his or her own consumption.

52B C.J.S. Larceny, § 7. Similarly stated,

...water which is reduced to actual physical possession by being taken into vessels or storage receptacles, or by confinement in pipes or other artificial conduits, may be the subject of larceny. Thus, water supplied by a water company to a consumer and standing in his or her pipes may be a subject of larceny, and the same is true of water in the main supply line, so that a consumer who, by means of false connections, diverts the water so that it flows around his or her meter and consumes it on his or her property without the consent of the owner and without having it registered, with intent thus to deprive the owner thereof without payment therefor, may be held guilty of larceny. Although a jurisdiction may have a separate code section making it an offense to divert water from a water system, the taker may be charged under the general larceny provision rather than the specific code section.

50 Am.Jur.2d Larceny, § 77. See also: Clark v. State, 170 P.275, 276 (Okla. 1917) ("Nor can it be successfully contended that water confined within the mains and pipes of the city's

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water system may not be the subject of larceny. It was such at common law.”); Adams et al. v. Portage Irrigation, Reservoir and Power Co. et al., 72 P.2d 648, 652 (Utah, 1937) (“Waters in this state are of two classes, public waters and private waters. The latter class is not only subject to exclusive control and ownership, but may be used, sold, or wasted. It consists of such waters only as have been reduced to actual, physical possession of an individual by being taken into his vessels or storage receptacles. It is private property and maybe the subject of larceny); People v. Kraus, 37 N.E.2d 182, 184 (Ill. 1941) (“Water in the pipes of a waterworks system, gas, and electricity are the subject of larceny.”)

Consistent with the above, in my opinion, the theft of water from a municipality could be considered larceny under the common law. If there are any questions, please advise.

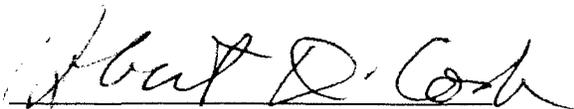
Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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