

The State of South Carolina



Office of the Attorney General

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August 8, 1991

Charles V. B. Cushman, III, Esquire
Camden City Attorney
P. O. Drawer 39
Camden, South Carolina 29020

Dear Mr. Cushman:

Attorney General Medlock has referred to me your opinion request on behalf of Camden City Council. You ask, first, whether South Carolina Code Sections 15-3-530 and 15-3-535 are applicable to a situation in which a City of Camden utility customer seeks to recover overcharges incorrectly assessed by the City from 1947 through 1973.

South Carolina Code Ann. Section 15-3-530 provides for the limitation of time within which an action should be brought. In a 1985 decision, the South Carolina Supreme Court, in Tunstall v. United Telephone Company Inc., 283 S.C. 588, 325 S.E.2d 61 (1985), held that an action for recovery of overcharges paid by a customer to a telephone company was a debt governed by the six year statute of limitations. While the opinion of this Office may differ upon the particular cause of action asserted by the customer or development of additional facts, it appears that, generally, Section 15-3-530 would apply in this instance of a municipally owned utility system.

You also ask whether Section 15-3-535 would apply. Again, application of this statute would depend upon the cause of action pursued. I note, however, that the "discovery rule", the rule which states that the statute of limitations runs from when the plaintiff knew or should have known he had a cause of action, has been construed to apply to contract actions governed by Section 15-3-530 (1) as well as actions governed by 15-3-530(3); 15-3-530(4); and 15-3-530(5). Santee Portland Cement v. Daniel International, 299 S.C. 269, 384 S.E.2d 693 (1989). See also, S.C. Op. Atty. Gen., April 30, 1968; Campus Sweater and Sportswear Company v. M. B. Kahn Company, 515 F.Supp. 64 (D.C. S.C. 1979). Of course, ultimately the determination as to the applicable statutes would be for a court to make, particularly in light of possible unknown factors.

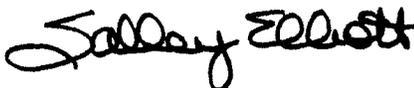
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You also ask whether the customer knew or should have known by the exercise of reasonable diligence that he had a cause of action. The question you pose involves a factual determination and is, therefore, one which this Office is not authorized to address. See S.C. Code Section 1-7-110; Ops. Atty. Gen., December 12, 1983; November 14, 1983.

I enclose for your additional information an opinion issued by this office on February 18, 1982 which reviews six potential theories of recovery available through litigation as well as the statute of limitation applicable to each. This information should be helpful in a general sense depending upon the cause of action anticipated.

With kind regards, I am

Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions