

1977 WL 37436 (S.C.A.G.)

Office of the Attorney General

State of South Carolina  
September 28, 1977

\*1 Honorable George E. Jackson  
Office of the Mayor  
Liberty, South Carolina 29657

Dear Mayor Jackson:

You have requested an opinion whether the City of Liberty fire department may legally answer a rural call when the homeowner has not paid his rural fire protection fee and thereby entered into a contract with the city. In my opinion, a city is generally prohibited from providing fire service to a homeowner outside the boundaries of the city if he has not contracted for that service.

In general, '[o]peration of the municipal fire department is a governmental function which, without express statutory or charter authorization, may not be conducted extraterritorially.' 16 McQUILLIN, MUNICIPAL CORPORATIONS § 45.05a. South Carolina has enacted a statutory exception to this general law by permitting a municipality to '. . . perform any of its functions, [and] furnish any of its services [with certain exceptions not relevant here] . . . in areas outside the corporate limits of such municipality by contract with any individual . . .' (emphasis added)

Section 5-7-60 Code of Laws of South Carolina (1976). Therefore, the City of Liberty may offer fire protection to rural homeowners pursuant only to a contract with such homeowner. This conclusion assumes, of course, that there is no provision in the municipal charter which requires the city to provide this service under some other arrangement.

This rule may seem to operate with harsh results, such as when a rural home suffers a fire and is without help simply because the homeowner has failed to pay the rural fire protection fee. Although it is not obligated to do so, the city may seek ways of legally making available the services of the fire department on occasion to non-subscribing rural homeowners. One jurisdiction has found a means to do this in an '. . . implied municipal power . . . to respond to occasional outside alarms, when in the discretion of the council such action subserves the municipal welfare.' 16 McQUILLIN § 45.05a.

A second means of extending the fire service beyond the city boundaries may perhaps be accomplished by a city ordinance which would permit the city fire department to answer alarms from rural non-subscribing homeowners whenever equipment were available. The ordinance may be drafted in such a manner as to make the call from a rural homeowner give rise to an implied contract by which the homeowner would agree to pay the costs incurred by the fire department in answering the call. This provision would be consistent, I believe, with the State statute permitting extraterritorial operation of a city fire department.

In conclusion, the City of Liberty may not provide fire protection services to rural homeowners who have not paid the annual fee and thereby contracted with the city for that service. However, the City Council may, if it chooses, find ways of extending this service to non-subscribing rural homeowners under terms consistent with the law discussed above.

With kind regards,

\*2 Karen LeCraft Henderson  
Assistant Attorney General

1977 WL 37436 (S.C.A.G.)