

1979 WL 43528 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 16, 1979

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Attorney at Law
1543 Ashley River Road
Charleston, SC 29407

Dear Mr. Knight:

Mr. McLeod has referred your letter to me for reply. You have asked ‘. . . whether or not a penalty or a late charge could be imposed on a sewer service bill which is past due without legal action and if so, what amount could be imposed as a late charge or penalty.’

As the memorandum you sent me indicated, there is no specific statutory authority in South Carolina related to your questions. Nor are there cases or general authorities directly on point. McQuillen on Municipal Corporations, § 31.30a states that:

[t]he municipality may fix fees, rents, charges, and rates for making connections with and for using its sewers and drains, outside the municipal limits as well as within, and may, by law, have a lien upon the property therefore. Sewer charges are usually established by ordinances, the validity of which is presumed.

McQuillen at § 31.30 states that:

[m]unicipalities are generally authorized to compel property owners to make sewer connections within a reasonable distance . . . It may enforce this requirement by appropriate ordinance penalties. (Emphasis Added).

See also City of Columbia v. Shaw, 131 S.C. 462, 127 S.E. 722 (1925); Barker v. Town of Allendale, 203 S.C. 149, 265 S. E. 2d (1943); McQuillen, §§ 35.37 and 17.06.

The law is clear, therefore, that a municipality may establish rates for sewer service and may be law create a lien on that property for failure to pay these charges. South Carolina Code of Laws, 1976, § 6-11-170. However, it is not clear that in the absence of express statutory authority, a late charge could be imposed without legal authorization. In the absence of a statute, any action by the municipality imposing such a fine would not be free from doubt and could be subject to question.

Assuming a penalty should be legally authorized, that penalty must be reasonable. McQuillen at § 17.13.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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