

1976 WL 30860 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 12, 1976

*1 Hubbard W. McDonald, Jr., Esquire
Tatum City Attorney
P. O. Box 72
Bennettsville, South Carolina 29512

Dear Mr. McDonald:

You have requested an opinion from this Office as to whether or not a municipality is authorized by the provisions of Act No. 283 of 1975, the 'home rule' legislation, to grant an exclusive franchise to a water company in order for the company to provide water services to the municipality for a period of forty years. In my opinion, it is.

Section 47-32, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.) provides in part as follows: All municipalities of the State shall, . . ., have authority to . . .; grant franchises for the use of public streets and make charges therefor; . . .

The language hereinabove quoted is generally construed to include the grant of a franchise to a water company to use a municipality's public streets in order to supply water to that municipality, to wit:

. . . in nearly every jurisdiction, . . ., a grant to a public service company of the right to use streets for . . . water pipes to supply water, . . ., is a franchise. 12 McQUILLIN MUNICIPAL CORPORATIONS § 34.07 at 21 (Revised Ed. 1970).

. . . [t]he right to conduct a business of public utility and use of the streets and public ways for this purpose, for example, to supply the public with water, . . ., is required to be conferred by public authority, and this constitutes the giving of a franchise. Ibid., § 34.04 at 15.

. . . and the use of the streets may be granted for . . . pipes to furnish water to the municipality, . . . Ibid., § 34.14 at 46.

As to the granting of a franchise to a water company to provide water services to a municipality for a forty-year period, the authorities state:

. . . the legislative body of a municipal corporation has power to make a grant which is binding on its successors, and for a term longer than that of the members of the council granting the franchise or making the contract. Ibid., § 34.47 at 128.

See also, [Omaha Water Co. v. Omaha](#), 147 F.1 (25 years not unreasonable); [Phoenix City v. Alabama Power Co.](#), 195 So. 894 (101 years not unreasonable).

Although there is authority to the effect that a municipality's power to grant an exclusive franchise to use the streets must be delegated to it by the legislature either expressly or by necessary implication [see, e.g., 12 McQUILLIN MUNICIPAL CORPORATIONS § 34.23 (and cases collected thereunder)], I think that the following language in Act No. 283 of 1975,

as well as the language of the State Constitution hereinafter quoted, clearly intend that a South Carolina municipality is not prohibited from granting such a franchise:

[t]he powers of a municipality shall be liberally construed in favor in the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities. § 47-30, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.)

*2 See also, Art. VIII, § 17, S.C. CONST., 1895, as amended ('The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution').

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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