

1975 S.C. Op. Atty. Gen. 205 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4136, 1975 WL 22432

Office of the Attorney General

State of South Carolina

Opinion No. 4136

September 26, 1975

*1 The municipal authorities of North Augusta, South Carolina, have no power to, in effect, contract by ordinance with suburban property owners to provide fire protection to private property located outside the corporate limits

TO: Member
House of Representatives

Question Presented:

May a property owner living without the corporate limits of North Augusta, South Carolina, and using city water, be required to pay a bi-monthly fee for fire protection as a condition of continuance of said water supply?

Statutes, Cases, etc. Involved:

§ 34-7(b), North Augusta City Code.

§§ 47-1154 and 47-1154.1, et seq., South Carolina Code of Laws (1962), as amended.

§ 47-1211 of the Code.

§ 59-534 of the Code, as amended.

[State of Washington ex rel Markham v. Seattle and R.V. Ry. Co., \(D.C.\) 1 F. 2d 605 \(1924\).](#)

[Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E. 2d 749 \(1967\).](#)

[City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E. 2d 242 \(1963\).](#)

[Looper v. Easley, 172 S.C. 11, 172 S.E. 705 \(1934\).](#)

1962-65 Ops. Att'y Gen, No. 1927, p. 221 (Attached).

62 C.J.S. Municipal Corporations § 411.

5 McQuillin, Municipal Corporations § 15.10 (3rd Ed).

Discussion of Issues:

The Mayor and City Council of the City of North Augusta, South Carolina, passed an ordinance on May 21, 1974, amending Section 34-7(b) of the North Augusta City Code relating to rates and charges as follows:

'Each user of city water outside the limits of the city, whose property lies within one thousand feet of a fire hydrant, shall be required to pay, in addition to the rates and charges specified in Subsection (a) of this Section to be paid for water, the sum of TEN DOLLARS (\$10.00) bi-monthly along with and as a part of the water bill, for city fire protection provided that any obligation to furnish fire protection outside the limits of the city is subordinate to the right and responsibility of the city to protect the property lying within the city limits.'

Although an 'ordinance' as a term of municipal law is the equivalent of 'legislative action', ordinances of a city are of a dual nature. They may be in effect local laws, or they may constitute contracts. 62 C.J.S. Municipal Corporations § 411; State of Washington ex rel Markham v. Seattle and R.V. Ry. Co., D.C., supra; Harrelson v. City of Fayetteville, supra; 5 McQuillin, Municipal Corporations § 15.10 (3rd Ed). Thus, it is clear that the terms of Section 34-7(b) of the North Augusta City Code have the effect of forming a contractual arrangement between the City of North Augusta and all individuals concerned. In essence, the city agrees to supply water to persons outside the corporate limits of the municipality, the acceptance of such water then constituting an agreement on the part of the receiving party to pay the imposed fee for fire protection. State of Washington, supra.

In light of the foregoing conclusion, reference is made to an opinion of this office dated October 15, 1965, and incorporated herein by reference, extensively and thoroughly dealing with this precise question and arriving at a conclusion completely applicable to the present situation.

*2 In essence, Sections 47-1154 and 47-1211 of the 1962 Code authorize City Councils in all cities having more than one hundred (100) inhabitants to equip and control a municipal fire department, and to establish by ordinance 'fire limit' zones within the corporate limits. Furthermore, Sections 47-1154.1, et seq., provide express statutory authorization for certain cities in South Carolina to contract to furnish fire protection outside the corporate limits of their municipality. There is no express authority in these Code Sections or in the City Charter for the City of North Augusta to furnish fire protection beyond the corporate boundaries or for the benefit of non-residents of the municipality.

Therefore, making full reference to the previously rendered opinion of this office incorporated hereinabove, it is the opinion of this office that the municipal authorities of the City of North Augusta have an implied power to permit municipal fire equipment to respond to outside alarms, when in the discretion of the municipal authorities such action subserves the municipal welfare. However, absent express legislative action, the City of North Augusta has no power to, in effect, contract by ordinance with suburban property owners to provide fire protection to private property located outside of the corporate limits. Such contract or plan to extend municipal service extraterritorially is considered to be ultra vires on behalf of the City of North Augusta. It necessarily follows that application of sanctions for nonpayment of the fire protection fee, such as termination of water service, would also be ultra vires as an exercise of police powers not authorized by the State Legislature. City of Charleston v. Jenkins, supra.

The City of North Augusta has authority, however, to contract to furnish fire protection to organized rural fire protection districts created pursuant to Sections 59-609, et seq., South Carolina Code of Laws (1962).

It is necessary to note that consideration has been given to Section 59-534 of the Code, as amended, which authorizes cities in Aiken County to contract to furnish water to persons without the corporate limits 'upon such terms, rates and charges as may be fixed by the contract or agreement between the parties to this effect. . . .' (emphasis added). However, this would not allow the City to enter into a contract which would otherwise be ultra vires. Looper v. Easley, supra.

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