

1974 WL 27561 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 30, 1974

*1 The Honorable Wheeler M. Tillman
Member
House of Representatives
P. O. Box 4295
Charleston Heights, South Carolina 29405

Dear Mr. Tillman:

Attorney General McLeod has referred to me your letter inquiring whether a proposed enactment imposing a criminal penalty for failure to connect to a sewer line would be constitutional. You contemplate a statewide act which would make it a misdemeanor for a property owner to fail to connect with the sewage line within sixty (60) days after having been notified to do so, with a penalty of one hundred dollars (\$100.00) or thirty (30) days, plus a similar daily fine for each day in which he fails to connect or a somewhat more severe second-offense penalty.

It has long been settled that a municipality may require property owners to connect with sewer lines, and may enforce this requirement by a criminal penalty; [District of Columbia v. Brooks](#), 214 U.S. 138, 29 S.Ct. 560, 53 L.Ed. 941 (1909); [Hutchinson v. Valdosta](#), 227 U.S. 303, 33 S.Ct. 290, 57 L.Ed. 520 (1913). This is seen as a sound exercise of the police power, necessary to the public health. Since a substantial number of sewer lines in this State have been constructed by special purpose districts, the question arises as to whether these districts could also enforce criminal penalties.

As matters currently stand, each special purpose district has the power, at its option, to require property owners to connect to sewer lines, § 59-497(3), and to enforce such regulations by mandatory injunction; § 59-499. In [Ruggles v. Padgett](#), 240 S.C. 494, 126 S.E.2d 553 (1962), it was made clear that a statute with similar effect was within the plenary power of the General Assembly and did not violate Article III, § 34(IX) of the Constitution (prohibiting special laws where general ones could be made applicable). The court noted that the statute did not provide a criminal penalty and distinguished [Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316 (1949) on that ground. However, it would appear that the vice of the statute in [Gaud](#) was that it gave only one county the power to enact criminal ordinances, rather than the fact that it delegated the power to define minor crimes to subdivisions of the State in general. The question of whether such might be done by a general statute was expressly reserved (syl. 19-20). If a statute were to grant the power to enforce sewer-connection regulations by criminal penalty to all governmental subdivisions which construct sewers (e.g., municipalities and special purpose districts) it is the opinion of this office that it would not violate the prohibition against special legislation, and that there is no other provision in the Constitution which would limit the plenary power of the General Assembly to enact such legislation; cf. § 47-61 (grant of limited police power to cities and towns).

Very truly yours,

Kenneth P. Woodington
Staff Attorney

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