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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Case No. 2018-CP-10-02764

Appellate Case No. 2021-001395

Snee Farm Lakes Homeowner’s Association, Inc.,
individually and on behalf of those similarly situatedAppellant,

v.

The Commission of Public Works for the Town of Mount Pleasant
d/b/a Mount Pleasant Waterworks Respondent.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, the Municipal Association of South Carolina (the “Association”), respectfully requests the permission of this Court to file and serve an *amicus curiae* brief in the above-captioned matter, currently pending before this honorable Court. As allowed by Rule 213, SCACR, the Association also conditionally files its brief with this Motion for Leave to File.

I. Interest of *Amicus Curiae*

The Association is a nonpartisan, nonprofit association of South Carolina's incorporated cities and towns. All 271 municipalities in South Carolina are members of the Association. The Association provides services and programs directly to its member municipalities and represents the collective interests of municipalities throughout the State. There are approximately 190 municipal water utility systems and approximately 100 municipal sewer utility systems within the State of South Carolina. Municipal utility systems serve a substantial portion of the people, businesses, and institutions of the State, both inside and outside of municipalities, and drive economic activity throughout our State

As provided by Rule 213, SCACR, the Municipal Association's interest in this case is to provide the Court with broader perspective on the views and interests of South Carolina municipalities as it concerns their constitutional and statutory rights to serve and charge for utility services. The Municipal Association considers these rights to be foundational municipal rights in South Carolina, and their protection is important to the Municipal Association's members.

II. Desirability of Brief of *Amicus Curiae*

The threshold legal issue in this case is whether S.C. Code Ann. § 6-1-330, which authorizes local governments "to charge and collect a service or user fee," applies to water utility charges.

The Association argues that S.C. Code Ann. § 6-1-330 does not apply to water utility charges, but instead applies only to fees and charges imposed under the Home

Rule Act. When State law specifically authorizes a local fee or charge outside of the Home Rule Act, S.C. Code Ann. § 6-1-330 is irrelevant. With respect to the dispute in this case over water utility charges, the application of S.C. Code Ann. § 6-1-330 would materially, adversely affect local governments that own and operate water utilities.

Moreover, applying S.C. Code Ann. § 6-1-330 to water utility charges would implicate a host of other local fees and charges that are authorized outside of the Home Rule Act. For example, local governments operate other types of utilities, including sewer, electricity, and natural gas, which have their own engineering practices for rate design. Likewise, State law specifically authorizes local fees and taxes in many other, non-utility contexts. The logic of applying S.C. Code Ann. § 6-1-330 to water utility charges would suggest that it applies to such separately authorized local fees and taxes as well.

In short, the question of whether S.C. Code Ann. § 6-1-330 applies to water utility charges is one of considerable statewide importance. Given the Association's extensive experience in municipal law, it can offer an overall perspective on the importance and resolution of this question. The Association therefore requests leave to submit an *amicus curiae* brief to draw this Court's attention to the importance of the issue and to provide the larger context in which this dispute is situated. In the Association's view, this Court should either (1) definitively rule that S.C. Code Ann. § 6-1-330 does not apply to water utility charges at all, or (2) affirm on the narrower basis adopted by the trial court and argued by the Commission on appeal. In no event should this Court, despite any concessions, admissions, or assumptions by the

parties, precedentially determine that S.C. Code Ann. § 6-1-330 applies to water utility charges.

WHEREFORE, the Association respectfully requests that the Court grant leave for the Association to file and serve an *amicus curiae* brief and, further, to accept for filing the Association's conditionally filed brief.

Respectfully submitted,

s/Bryan Eric Shytle

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