

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS) CIVIL ACTION NO: 2011-CP-30-309

2014 SEP 26 A. 9: 52

Commissioners of Public Works of the
City of Laurens, South Carolina, also
Known as the Laurens Commission of
Public Works,

LAURENS COUNTY ORDER
CLERK OF COURT

Plaintiff,

vs.

City of Fountain Inn, South Carolina

Defendant.

RECEIVED

SEP 04 2015

SC Court of Appeals

This matter was tried by the Court on March 20, 2014. In this case, the City of Laurens, South Carolina (the "City of Laurens"), acting through the Laurens Commission of Public Works ("LCPW"),¹ seeks a declaratory judgment that it has established a "designated service area" outside the corporate limits of the City of Laurens pursuant to S.C. Code Ann. § 5-7-60 for furnishing natural gas, such that the City of Fountain Inn, South Carolina ("City of Fountain Inn") may not serve natural gas in that designated service area without the permission of the LCPW.

Having considered the evidence presented at trial, the arguments of counsel and the applicable law, this Court concludes that under the language of Section 5-7-60, the area that the LCPW has served, which is on the southern and eastern side of the boundary line shown on the map attached to the Complaint in this action², is the LCPW's designated service area for furnishing natural gas, and that the City of Fountain Inn may not provide natural gas service in that area without the permission of the LCPW.

¹ Under *City of Spartanburg v. Blalock*, 223 S.C. 252, 75 S.E.2d 361 (1953), the LCPW is the entity that acts for the City of Laurens in providing utility services.

² A larger copy of the map showing the boundary line is in the record of the case marked as Plaintiff's Exhibit 9.

EXHIBIT B

I. Facts

The LCPW and the City of Fountain Inn sell natural gas to customers inside their respective corporate limits as well as to customers outside those limits as allowed by Section 5-7-60. At the trial of this matter, Coleman Smoak, the former general manager of the LCPW, and Carey Elliott, the former manager of the natural gas system for the City of Fountain Inn, testified that in 1992, officials from the two cities (including Mr. Smoak and Mr. Elliott) agreed to establish a boundary line in the unincorporated area between the two cities so that there would not be overlapping gas lines going into the same areas. As testified to by Scott Heath of Heath & Associates, Inc., an engineering firm that has worked with both cities' gas systems, there are financial and safety reasons for municipalities not to lay gas lines in the same area.

Thus, the parties drew a boundary line on a map, a copy of which is attached to a letter sent by Coleman Smoak to Carey Elliott dated November 11, 1992, and which is attached to the Complaint in this action (the "1992 map"). Though the boundary line was not formally ratified by the Fountain Inn City Council and the LCPW, the boundary line reflected the areas the cities were already serving. Mr. Smoak and Mr. Elliott testified that for the next several years (almost 2 decades), the boundary line on the 1992 map was observed such that the LCPW served natural gas by contract to all customers on the southern and eastern side of the boundary line (the City of Laurens side of the line), and City of Fountain Inn served customers by contract on the northern and western side of the line (the Fountain Inn side of the line). When there was some occasional overlap at the boundary line, it was because the parties had cooperated regarding which entity wanted to provide the service.

Dale Satterfield, the most recent general manager of the LCPW, and John Young, the current general manager, testified that the LCPW continues to provide natural gas service by contract throughout area on the southern and eastern side of the boundary line. Mr. Satterfield, Mr.

Young and Mr. Heath all testified that the LCPW has the necessary lines and other infrastructure in place to serve all the customers within the territory it serves, and, in fact, has excess capacity to do so.

This case arose in 2011, when a new industrial customer announced plans to construct a new manufacturing facility on the City of Laurens side of the line, and Fountain Inn decided to solicit that business in violation of the service area boundary line. The LCPW objected based upon the service areas that the parties had observed. According to the testimony of the LCPW's witnesses, as well as that of Mike Pitman, the current gas manager for City of Fountain Inn, the City of Fountain Inn took the position that it was not restricted in competing against the LCPW for customers in the area that the LCPW was already serving despite what had transpired before. Though it was unsuccessful with that prospective customer, the City of Fountain Inn continued to compete for customers in the area the LCPW believed to be LCPW's designated service area. Therefore, the LCPW brought this declaratory judgment action to determine if it has the right to exclude the City of Fountain Inn from serving customers in the area that has been served by the LCPW.³

II. The Statute

S.C. Code § 5-7-60 provides:

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina

³ In addition to its action under S.C. Code Ann. § 5-7-60, the LCPW originally sought relief under breach of contract and promissory estoppel theories, but it abandoned those causes of action and only sought relief under Section 5-7-60.

Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *Provided*, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

Id. (Emphasis in original).

“The Home Rule Act of 1975 completely rewrote the powers of municipalities in this State. S.C. Code Ann. § 5-7-60 (1976) contains provisions both granting and delimiting the exercise of corporate functions of municipalities outside their corporate limits.” *City of Newberry v. Public Service Comm’n of South Carolina*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986) (emphasis added).

In applying Section 5-7-60 in this case, the Court is aided by the following well-known rule:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). When a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007).

Hudson ex rel. Hudson v. Lancaster Convalescent Center, 407 S.C. 112, 122, 754 S.E.2d 486, 491 (2014):

Section 5-7-60 provides that a municipality may provide its services outside its corporate limits except within the designated service area of another municipality or political subdivision.

The statute defines a “designated service area” for purposes of this statute as the area “in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.” Based upon the language of Section 5-7-60, the Court agrees that the area served by LCPW on the southern and eastern side of the boundary line created in 1992 is the LCPW’s “designated service area” for natural gas service. The testimony at trial was undisputed that the LCPW has furnished natural gas service in this area outside its corporate limits for over two decades and has the infrastructure to provide that service on an ongoing basis. It is also noted that in addition to having exclusively served the area for over two decades, the LCPW passed a resolution certifying that the LCPW provides natural gas service in the area that it identifies as its Natural Gas Designated Service Area, and that it has budgeted to do so in accordance with Section 5-7-60. Therefore, the territory served by LCPW is a territory “in which the particular service [natural gas] is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.” S.C. Code Ann. § 5-7-60. Further, in accordance with the statute, the City of Fountain Inn may not furnish natural gas in the LCPW’s designated service area without the consent of the LCPW, as the governing body of the City of Laurens, for the purpose of providing natural gas. *City of Spartanburg*, 223 S.C. at 259-60, 75 S.E.2d at 364.

In reaching this conclusion, this Court notes that prior cases are consistent with this conclusion. In *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), the South Carolina Supreme Court held that the Sewer District qualified as a “designated service area” under S.C. Code Ann. § 5-7-60 based upon the Sewer District’s affidavit stating that the Sewer District had constructed sanitary sewerage collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261. Thus, the Sewer District could limit the City of Spartanburg from providing a competing

service in the same area. *Id.* In that case, the fact that the Sewer District had the facilities in place to provide service to that area qualified it as the Sewer District's "designated service area."

In *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990), the Cities of Hartsville and Darlington were providing fire protection services by contract in a five-mile radius outside their corporate limits under § 5-7-60. *Id.* at 42-43, 393 S.E.2d at 377 - 78. Darlington County passed an ordinance creating a fire district under S.C. Code Ann. § 4-19-10 to include all unincorporated areas of Darlington County. *Id.* at 42, 393 S.E.2d at 377. The Cities of Hartsville and Darlington sued to prevent the fire district from providing fire protection service where the cities were already providing it, which included an area outside the corporate limits of those cities. *Id.* In that case, the cities relied on § 4-19-10(b) which provides, in pertinent part, that a fire district may not include within its service area:

those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of the fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.

Kilgo, 302 S.C. at 43, 393 S.E.2d at 378 (emphasis added).

The Supreme Court held that § 4-19-10(b) and § 5-7-60 are not in conflict and that § 4-19-10(b) "protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in absence of an agreement, newly created county fire districts must exclude areas served by cities under contract." *Id.* That service area was defined to be the 5-mile radius around the City of Darlington and the City of Hartsville in which the Cities provided fire protection services. *Id.*

There is a distinction between *Kilgo* and the case at bar – namely that there was an additional statute providing that a service area is an area in which a service is being provided. However, the language in Section 4-19-10(b) is materially the same as the pertinent language in

Section 5-7-60. What is important about *Kilgo* to this case is that under the language of Section 5-7-60 and the parallel language in Section 4-19-10(b) regarding a service area, the cities had the right to control the provision of a service outside the cities' corporate limits where the cities were already providing that service by contract, and the only requirement for designating that area was that the municipality was serving it. As pointed out in the dissent in *Kilgo*, that area included the entire area in which the service was made available by contract and not just to the customers with whom the cities had existing contracts. *Id.* at 45-49, 393 S.E.2d at 379-382.

Similarly in *Mathis v. Hair*, 358 S.C. 48, 594 S.E.2d 851 (2002), the Court of Appeals defined the meaning of a "service area" for purposes of S.C. Code Ann. § 23-9-420. *Id.* at 852. In doing so, the Court noted that the language in Section 23-9-420 is similar to the language used in Section 5-7-60 and that "service area" is defined by the statute to mean an area in which the service is being provided. *Id.* at 53, 594 S.E.2d at 854.

In this case, there is a specific service area outside the City of Laurens in which the LCPW has provided natural gas service for decades. Just as in *Spartanburg Sanitary Sewer District*, it was established in this case by the testimony of Coleman Smoak, Dale Satterfield and Scott Heath that the LCPW has had the facilities in place to provide natural gas service throughout the designated service area since before 1992, and, in fact has excess capacity. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261.

Similar to the facts in *City of Darlington v. Kilgo*, the testimony of Coleman Smoak, Carey Elliott, Dale Satterfield and Scott Heath, showed that this area has been served exclusively by the LCPW and that the LCPW has had and still has contracts throughout the service area since before 1992. *See Kilgo*, 302 S.C. at 43, 393 S.E.2d at 378 (noting that the service area was established by the actual provision of services). The City of Fountain Inn did not seek to serve that area until shortly before this action was filed, and any crossover by the City of Fountain Inn into the LCPW's

designated service area was minimal and based upon permission given by the LCPW. Therefore, under the reasoning in *Kilgo*, the entire area in which the LCPW provides service by contract is its designated service area. *Id.* (“[T]his Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a “service area.”)

The City of Fountain Inn’s policy arguments do not change the analysis because the statute is clear. For example, the City of Fountain Inn introduced the fact that it is considerably closer to Owings Industrial Park, which is located within the LCPW’s designated service area, than is the City of Laurens, and, therefore, the City of Fountain Inn should be able to serve Owings Industrial Park. Nothing in Section 5-7-60 makes the extent of the service area a relevant inquiry. In *Spartanburg Sanitary Sewer District*, the Supreme Court rejected an argument by the City of Spartanburg that it could serve a specific area more economically than the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72-73, 321 S.E.2d at 261. While the Supreme Court’s conclusion as to that point is not expressly based upon its earlier finding that the Sewer District constituted a designated service area under Section 5-7-60, the Court noted that nothing in the Act creating the Sewer District indicated an intent to allow the City to serve areas in the District because the City could more conveniently do so. *Id.* The same is true here.

The City of Fountain Inn also introduced evidence that it competes with Piedmont Natural Gas for gas service, and, therefore, there can be two competing natural gas providers in an area. Piedmont Natural Gas, however, is not a municipality. It is investor owned and is regulated by the Public Service Commission. Therefore, under *Glendale Water Corporation of Florence, Inc. v. City of Florence*, 274 S.C. 472, 265 S.E.2d 41 (1980), the City of Fountain Inn can extend its lines into areas served by a private utility. Because the LCPW is a municipal provider, the City of Fountain Inn cannot extend into the LCPW’s designated service area without the LCPW’s permission.

The City of Fountain Inn pointed out that Resolution No. 11-03, certifying that the LCPW currently serves the area the subject of this lawsuit, has budgeted to serve the area, and has applied funds of the Combined Utility System to serve the area was adopted just as this lawsuit was being filed. The adoption of that resolution, however, only certified a state of affairs that has existed with the knowledge and acquiescence of the City of Fountain Inn for decades—that the LCPW is acting as the only provider of natural gas service in the area. Under the statute, *Spartanburg Sanitary Sewer District and Kilgo*, providing the particular service in question is enough to establish a designated service area.

There are other issues such as an argument in favor of the benefits of competition, but competition in providing natural gas service is not a free-for-all. Even investor owned utilities are under the authority of the Public Service Commission. S.C. Code Ann. § 58-5-210, *et seq.*, and, must obtain a certificate to provide service. S.C. Code Ann. Regs. 103-404 (2008). Second, there are legitimate and important policy reasons to limit particular services to one municipal provider, such as safety concerns and incentives for municipalities to provide the service. However, the most important point is that the legislature drafted a clear and unambiguous statute to reflect legislative policy which does not permit a municipality to provide a service in an area already being served by another municipality without the other municipality's consent.

III. Conclusion

The LCPW has complied with the requirements to establish the territory on the southern and eastern side of the boundary line on the 1992 map as the LCPW's designated service area for a particular service, natural gas, under S.C. Code Ann. § 5-7-60. Therefore, the City of Fountain Inn may not provide natural gas service in that area without the consent of the LCPW.


IT IS SO ORDERED.



J. Cordell Maddox, Jr.
Judge of the Circuit Court

Anderson, South Carolina

9/24/, 2014

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