

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 19 2015

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable G. Thomas Cooper
The Honorable J. Ernest Kinard

Docket No. 2011-CP-40-6705
Appellate Case No. 2014-000032

Joseph S. Azar, Frank J. Cumberland, Jr., and
Michael A. Letts, individually and as Class Representatives,

Appellants,

v.

City of Columbia,

Respondent.

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

Pursuant to Rule 213, SCACR, the Municipal Association of South Carolina (“the Municipal Association”) respectfully requests and moves for leave to file and serve an Amicus Curiae Brief in this matter. As allowed by Rule 213, the Municipal Association also conditionally files its brief with this Motion for Leave to File. The Municipal Association bases this request on the following grounds:

1. The Municipal Association is a nonpartisan, non-profit association of the State’s incorporated cities and towns with 270 member municipalities. The Municipal Association, in

addition to offering services and programs to its member municipalities, promotes and represents the collective interests of municipalities.

2. Municipalities have State Constitutional authority (Article VIII, Section 16) to construct or acquire and to operate public utility systems, including water, sewer, gas, electric, and transportation utilities. South Carolina has approximately 190 municipal water utility systems and approximately 100 municipal wastewater (sewer) utility systems. Municipal utility systems serve a substantial portion of the people, businesses and institutions of the State, both inside and outside of municipalities, and are a significant economic engine for our State.

3. The issues in this appeal, as determined by this Court's decision of September 9, 2015, are of great importance to the Municipal Association's member municipalities which own and operate public utility systems, pursuant to Constitutional right. The decision of this Court, which is the subject of Respondent's Petition for Rehearing, would have a potentially adverse impact on those members.

4. Prior to this Court's decision in the case on September 9, 2015, no appellate court had determined that the general statute on new user fees adopted after 1996, S.C. Code § 6-1-330(B), applied to rates and revenues of municipal utility. Instead, municipal utility rates and revenues were considered and reviewed under statutes that predated the enactment of §§ 6-1-300 and 6-1-330, and that specifically addressed municipal utilities, such as S.C. Code § 5-31-670 ("Furnishing water for compensation; sewerage charge"), § 5-31-890 ("Contracts as to systems of sewage disposal"), and § 5-31-1910 ("Authorization for cities and towns to furnish water and electric current beyond corporate limits"), along with § 5-7-60 ("Municipality authorized to perform any of its functions or to furnish any of its services; charges and financing"), the municipal powers statute relating to extra-territorial services. Additionally, our case law,

beginning with Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911), provided clear precedent for the analysis of extra-territorial utility rates as a matter of contract between the municipality and the nonresident customer.

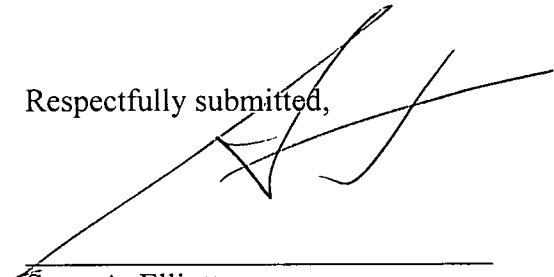
This Court's decision in this case represents a sharp departure from this legal framework and its long-accepted legal principles related to municipal rights and powers. This Court's decision, clearly disapproving of the wisdom of Columbia's operation of its water and sewer system as a perceived "slush fund," shoehorns municipal utilities into statutes and restrictions that simply do not fit. The results are new and highly restrictive limitations on municipal enterprise revenue, not previously imposed by State statute or State case law or general national municipal law.

5. The Municipal Association wishes to present supplemental and additional arguments in favor of the Respondent's position in this matter, including Respondent's Petition for Rehearing.

For these reasons, the Municipal Association respectfully requests that the Court grant leave for the Municipal Association to file and serve an Amicus Curiae brief and accept for filing the Municipal Association's conditionally filed brief, a copy of which is attached hereto.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,



Scott A. Elliott
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
(803) 771-0555

Danny C. Crowe
Crowe LaFave, LLC
500 Taylor Street, Suite 401
Columbia, SC 29201
(803) 724-5728

Lawrence E. Flynn
Pope Flynn, LLC
1411 Gervais Street, Suite 300
Columbia, SC 29201
(803) 354-4902

B. Eric Shytle
General Counsel, City of Sumter
P.O. Box 1449
Sumter, SC 29151
(803) 774-3953

Attorneys for Amicus Curiae
Municipal Association of South Carolina

October 19, 2015

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable G. Thomas Cooper
The Honorable J. Ernest Kinard

Docket No. 2011-CP-40-6705
Appellate Case No. 2014-000032

Joseph S. Azar, Frank J. Cumberland, Jr., and
Michael A. Letts, individually and as Class Representatives,

Appellants,

v.

City of Columbia,

Respondent.

PROOF OF SERVICE

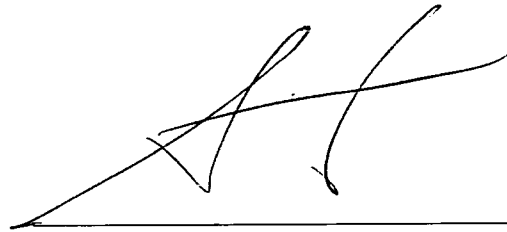
I certify that I have served the Motion for Leave to File Amicus Curiae Brief on Appellants and Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 19, 2015, addressed as follows:

C. Dixon Lee, III, Esquire
McLaren & Lee
P.O. Box 11809
Columbia, SC 29211-1809

Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, PC
P.O. Drawer 14547
Surfside Beach, SC 29587

M. Mullen Taylor, Esquire
Mullen Taylor, LLC
1230 Richland Street
Columbia, SC 29201

October 19, 2015

A handwritten signature in black ink, appearing to read 'S. Elliott', is written over a horizontal line.

Scott A. Elliott
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
(803) 771-0555

Attorney for Amicus Curiae
Municipal Association of South Carolina