THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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SC Court of Appeals

C.A. No.: 2011-CP-30-309

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

v.

City of Fountain Inn, South Carolina,.....Appellant:

PETITION FOR A WRIT OF CERTIORARI

Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381
Attorneys for Petitioner
City of Fountain Inn, South Carolina

Other Counsel of Record:

Bernie W. Ellis
Robert L. Widener
MCNAIR LAW FIRM, P.A.
104 South Main Street, Suite 700
Greenville, SC 29601
Telephone: 864 271 4940

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

INDEX

CERTIFICATE OF COUNSEL

Counsel for the City of Fountain Inn ("Fountain Inn") certifies that a petition for rehearing was made on May 30, 2018 and finally denied by the Court of Appeals on June 21, 2018.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in ruling that "[b]ecause the resolution of this matter turns on the interpretation of [S.C. Code Ann. §] 5-7-60, the appropriate standard of review for this case is that for the interpretation of a statute, which is an action at law," in this declaratory judgment action that ultimately sought injunctive relief in the form of an order excluding Fountain Inn from providing natural gas service to customers in unincorporated Laurens County?

2. Did the Court of Appeals err in finding that the Laurens Commission of Public Works ("LCPW") had established a designated service area pursuant to S.C. Code Ann. § 5-7-60 and could exclude Fountain Inn from entering contracts in an unincorporated area of Laurens County that had previously been undeveloped based on a 1992 Map drawn by the parties in furtherance of an agreement that was not and could not be approved by the respective City Councils?

INTRODUCTION

This Petition arises from a published opinion of the Court of Appeals. (App. at 1-10). It presents a novel question as to the ability of two municipal service providers to compete for customers located in an unincorporated area. In addition, the Court of Appeals misanalysed the standard of review in conflict with the previous opinions of this Court, conflating an action at law with a question of law. This error in a published opinion will give rise to confusion in any case seeking a declaratory judgment and raising questions of statutory construction. These two issues implicate the express terms of Rule 242, SCACR, and warrant a grant of discretionary review by this Court.

This argument is further supported by the Consent Motion to Certify and Transfer Appeal filed by the parties on April 20, 2016.[1] In that filing, the parties agreed, "this appeal presents both 'an issue of significant public interest' and 'a legal principle of major importance.'" Those same concerns remain following the opinion of the Court of Appeals. The parties further agreed at that time that "[g]iven the importance of the question presented and its potential to provide guidance to municipal service providers throughout the state as they seek to expand those services beyond their municipal limits, this appeal warrants prompt consideration and final disposition by this Court."

STATEMENT OF THE CASE AND FACTS[2]

LCPW is the entity established by the City of Laurens to provide combined utility services, including water, sewer, electricity, and natural gas. (R. at 7; 290:4-6). Fountain Inn also provides natural gas services.

[1] Motion (excluding attached copies of briefs) and Order denying Motion attached as Exhibit A.

[2] Fountain Inn incorporates the full statements of the case and facts from its Appellant's brief here.

Both parties provided service along the I-385 corridor for years. (*See* R. at 254:10-255:6). As admitted by counsel for LCPW at trial, the gas managers for the respective parties discussed establishing a boundary between them; however, no such agreement was ever formalized. (R. at 8; 241:20-25). In 1992, as part of these discussions, the gas manager for LCPW attempted to draw a line on a map which purported to be the "boundary line" (the "1992 Map"). (R. at 349-351).

In 2011, the Laurens County Development Corporation ("LCDC") announced plans for a new industrial park located about three miles from Fountain Inn (fifteen miles from the city of Laurens). (R at 329:2-6). The proposed industrial park is situated on the LCPW side of the alleged boundary line. This area of northern Laurens County was largely undeveloped. (R. at 315:12-18; 331:12-16). There was no testimony that either party had contracts with customers inside the area of the proposed industrial park at the time of the announcement. (*See* R. at 286:11-13). Both LCPW and Fountain Inn built new service lines to serve the new industrial park. (R. at 338:25-339:8).

LCPW brought this action on March 30, 2011 seeking a determination as to whether it had established a designated service area under S.C. Code Ann. § 5-7-60. (R. at 18-27). It further sought an injunction barring Fountain Inn from providing natural gas service within that area without the permission of LCPW.[3] Fountain Inn answered and denied that LCPW had established or could establish a designated service area in the manner set forth in the Complaint and that any agreement purporting to do so was not adopted by resolution by the applicable governing bodies, was *ultra vires* and unenforceable, was unsupported by consideration, did not

[3] The Complaint alleges causes of action for breach of contract and promissory estoppel; those claims, however, were withdrawn at trial. (R. at 9, n. 3; 324:14-329:19).

reflect a meeting of the minds, was illegal, and was barred by the doctrine of unclean hands. (R. at 28-36).

This matter was tried before the Hon. J. Cordell Maddox, Jr. on March 20, 2014, and an order on the merits was issued on September 24, 2014 ("Order"). (R. at 7-16). In the Order, the trial court declared that "LCPW has complied with the requirements to establish a 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." (R. at 15). The trial court further declared that Fountain Inn "may not provide natural gas service in that area without the consent of LCPW." (*Id.*).

After receiving the Order on September 29, 2014, Fountain Inn served a timely motion to alter or amend on October 8, 2014. (R. at 229-231). The motion incorporated Fountain Inn's arguments at trial and its briefings to the trial court. The motion challenged the structure of the Order, including the absence of findings of fact and conclusions of law, and raised several arguments with respect to the specific language in the Order. (*Id.*) The trial court denied the motion without a hearing by order dated August 13, 2015. (R. at 17). Fountain Inn received written notice of the entry of this order on August 21, 2015 and timely served a notice of appeal on September 2, 2015.

The Court of Appeals affirmed the trial court's decision in an opinion that includes several pages of general law followed by one paragraph of analysis. (App. at 1-10). Fountain Inn sought rehearing on several grounds, including that the opinion fails to include key facts, does not correctly analyze the standard of review, failed to correctly apply S.C Code Ann. § 5-7-60 on the facts of this case, and misstates the findings in the trial court's order. (App. at 11-16). Fountain Inn also incorporated all of its previously made arguments and asked that those

arguments be addressed and analyzed by the Court of Appeals. (App. at 11). The Court of Appeals denied the petition for rehearing without discussion on June 21, 2018.

ARGUMENT

I. The Court of Appeals incorrectly analyzed the standard of review to be applied in this case, creating a dangerous precedent as to the standard to be applied in cases that present a question of law.

In its opinion, the Court of Appeals appears to have conflated a question of law (such as construction of a statute) with an action at law for purposes of the standard of review. As set forth by the Court of Appeals,

> However, LCPW contends the standard of review is that interpreting a statute and thus is at law. "Statutory interpretation is a question of law . . . ." Barton v. S.C. Dep't of Prob. Parole & Pardon Servs., 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013). . . . Because the resolution of this matter turns on the interpretation of section 5-7-60, the appropriate standard of review for this case is that for the interpretation of a statute, which is an action at law.

(App. at 5).

The presence of a question of law is not outcome determinative as to whether a case sounds in law or equity. The opinion of the Court of Appeals is dangerous precedent on this point because it fails to acknowledge that questions at law can arise in otherwise equitable actions like this one. *See* Jean H. Toal *et al., Appellate Practice in South Carolina* 226, 230 (3d ed. 2016). In such a case, the court reviews the questions of law *de novo*, but reviews the factual findings according to the Court's view of the preponderance of the evidence. *See Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A legal question in an equity case receives review as in law."). If the opinion of the Court of Appeals is allowed to stand, any case raising questions of statutory construction runs the risk of being reviewed as an action at law. This error alone warrants review by this Court.

This was a declaratory judgment action seeking equitable relief in the form of an injunction preventing Fountain Inn from serving the areas claimed by LCPW. Fountain Inn would agree that the construction of a statute is a question of law, but that does not convert the nature of this action from a case in equity to a case at law.

To the extent this case raised factual issues, the Court of Appeals remained free to take its own view of the preponderance of the evidence and was not constrained to accept the trial court's findings. Fountain Inn submits there were factual issues with respect to whether service was actually being provided in the contested area. Therefore, once the Court of Appeals determined what constituted a "designated service area" for purposes of § 5-7-60, it then should have considered the facts of this case according to its own view of the preponderance of the evidence and applied that definition to determine whether LCPW established a designated service area. Fountain Inn is entitled to have its case reviewed under the correct standard.

For these reasons, this Court should grant review on this question to correct this error in this case and avoid further confusion on the part of the bench and bar with respect to actions raising questions of statutory construction generally.

II. This case presents an issue of first impression where two municipal providers seek to serve the same unincorporated area.

South Carolina appellate courts have not previously addressed a case where two municipalities seek to serve the same unincorporated area. As argued throughout this case by Fountain Inn, S.C. Code Ann. § 5-7-60 provides that municipalities may generally serve outside their city limits by contract.

The rulings by the Court of Appeals and the trial court take this general rule and turn it on its head by creating a rule that municipalities can create exclusive territories outside their city limits by proclamation where customers have no recourse in the market or at the ballot box.

Rather than providing clarification, Fountain Inn still does not have a clear idea of where it can and cannot pursue business under the reasoning provided by the Court of Appeals.[4]

This is not what § 5-7-60 was designed to do. Instead, § 5-7-60 was designed to allow cities to serve outside their borders unless such service would oust another governmental provider. That is the consistent theme of all of the previous cases under this statute. *See e.g., Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984). The Court of Appeals failed to acknowledge these general principles and further failed to address Fountain Inn's arguments that service by contract outside the city limits is the rule under § 5-7-60 and designated service areas are the exception. In addition, the Court of Appeals failed to acknowledge the policy arguments raised by the City in support of its construction of § 5-7-60 relating to Home Rule, the duties of municipalities with respect to residents versus non-residents, and the benefits of competition. This Court should address these issues and provide municipal service providers with clear guidance as to which contracts they can pursue outside their city limits.

No one was serving the area in question at the time this industrial park was announced. It was undeveloped. (*See* R. at 286:11-13; 315:12-18; 331:12-16; 371). The only way LCPW could claim to be serving there and thus, that the area was its designated service area, is by reference to the void boundary line from the 1992 Map to which the parties could not have agreed. If the line on the 1992 Map is void, no one had a designated service area in terms of previous service or contracts within the disputed area because there was no need for natural gas service.

[4] This confusion is illustrated by LCPW's counsel's musing at trial "does this mean it goes on forever, does this mean we can go all the way to Charleston." (R. at 345:5-7).

The Court of Appeals, in accepting LCPW's argument, accepted the line shown on the 1992 Map as a boundary, while at the same time declining to reach the issue of whether the parties could have made a permanent agreement with respect to where each could provide natural gas service. If the parties could not reach such an agreement, how can the line give rise to an enforceable boundary? Certainly, LCPW may continue to serve the customers with whom it has contracts, but any other area indicated by the 1992 map should not be considered a designated service area. Such a ruling is directly contrary to the spirit of *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-82, 480 S.E.2d 728, 731-32 (1997) and the idea that one council may not bind future councils. Thus, the Court of Appeals erred in failing to treat Fountain Inn's argument on this point.

Given the broad implications of this case for municipal providers of services outside their city limits and for possible customers located in unincorporated areas, this Court should grant review on this question and address this appeal on the merits. The City incorporates the arguments presented to the Court of Appeals here and would ask that it be permitted to raise those issues before this Court.[5]

CONCLUSION

As argued above, the Court of Appeals applied the wrong standard of review in this case and did so in a published opinion that resulting in needless confusion as to the appropriate standard to be applied in cases raising questions of statutory interpretation. In addition, the Court of Appeals failed to consider the arguments raised by Fountain Inn in finding that LCPW had established a designated service area in the disputed area based on the 1992 Map. Fountain

[5] These arguments would include the additional bases relating to the facts and the findings by the trial court raised in the City's petition for rehearing to the Court of Appeals.

Inn asks that this Court grant review as to both of the questions presented and consider this appeal fully on its merits under the correct standard of review.

Respectfully submitted,

Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Appellant
City of Fountain Inn, South Carolina

July 17, 2018
Greenville, South Carolina

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

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

v.

City of Fountain Inn, South Carolina, ...Appellant.

CONSENT MOTION TO CERTIFY AND TRANSFER APPEAL FROM THE COURT OF APPEALS AND FOR EXPEDITED CONSIDERATION, WITH INCORPORATED MEMORANDUM IN SUPPORT

EXHIBIT A

Pursuant to Rule 204(b), SCACR and with the consent of the Respondent Commissioners of Public Works of City of Laurens, South Carolina, also Known as the Laurens Commission of Public Works ("LCPW"), the Appellant City of Fountain Inn ("Fountain Inn") hereby moves this Court to certify this appeal for review, thereby transferring jurisdiction from the Court of Appeals to this Court.[1]

ARGUMENT

LCPW[2] brought this action, seeking a determination of who may provide natural gas to certain industrial customers that are located outside the city limits of both Laurens and Fountain Inn and an injunction prohibiting Fountain Inn from serving those customers. Fountain Inn denied that LCPW had any rights as a matter of statutory law or contract to be the dedicated service provider for these customers. The trial judge issued an order finding that LCPW had acquired "designated service area" outside its boundaries and that the City "may not provide natural gas service in that area without the permission of LCPW." Fountain Inn has appealed that order, and the appeal presents the Court with an opportunity to squarely address the application of S.C. Code Ann. § 5-7-60 with respect to two municipal providers and their ability to serve customers located outside their respective city limits.

As required by Rule 204(b), this appeal presents both "an issue of significant public interest" and "a legal principle of major importance." As reflected in the attached briefs, the parties have raised issues of significant public interest and a legal principle of major importance with respect to the ability of municipalities to provide services outside

[1] This appeal has been fully briefed and is ready for disposition. Copies of the final briefs are attached for consideration in conjunction with this motion.

[2] LCPW is an entity that provides utility services for the City of Laurens. It is not an independent special purpose district.

their municipal boundaries. Given the importance of the question presented and its potential to provide guidance to municipal service providers throughout the state as they seek to expand those services beyond their municipal limits, this appeal warrants prompt consideration and final disposition by this Court.

The same reasons support expedited consideration. To that end, the parties have consulted and, based on current calendars, they can generally be available for argument with the exception of the following dates: April 28-May5, May 12-13, May 20-23, May 31-June 9, August 1-5, and August 23.

As set forth above, the parties believe transfer is in the best interest of the parties and the citizens of South Carolina. A speedy and final order in this matter would help ease the growing pains faced by municipalities across the state as they seek to provide services outside their limits.

Respectfully submitted,

We so move:

Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Appellant
City of Fountain Inn, South Carolina

We consent:

Robert Widener w/ permission

Bernie W. Ellis
MCNAIR LAW FIRM, P.A.
P.O. Box 447
Greenville, SC 29602

Robert L. Widener
MCNAIR LAW FIRM, P.A.
Suite 1800, 1221 Main Street
P.O. Box 11390
Columbia, SC 29211

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

April 15, 2016

The Supreme Court of South Carolina

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

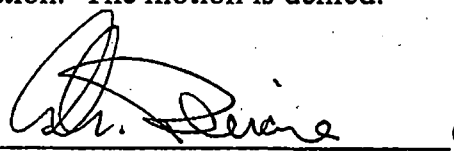
v.

City of Fountain Inn, South Carolina, Appellant.

Appellate Case No. 2016-000817

ORDER

Appellant has filed a Consent Motion to Certify and Transfer Appeal from the Court of Appeals and for Expedited Consideration. The motion is denied.



C.J.

FOR THE COURT
Hearn, J., not participating

Columbia, South Carolina

May 5, 2016

cc:
The Honorable Jenny Abbott Kitchings
Sarah Patrick Spruill, Esquire
Boyd Benjamin Nicholson, Jr., Esquire
David W. Holmes, Esquire
Bernie W. Ellis, Esquire
Robert L. Widener, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

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

v.

City of Fountain Inn, South Carolina,.....Appellant.

PROOF OF SERVICE

I certify that I have served the *Appellant's Petition for Writ of Certiorari* and *Appendix* on the following parties on this the 17th day of July 2018, by mailing a copy of the same via United States Mail, postage prepaid, or by hand delivering the same (as indicated) to the following:

Via U.S. Mail
Bernie W. Ellis (w/ Petition only)
McNair Law Firm, P.A.
P.O. Box 447
Greenville, SC 29602

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
(with petition only)
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Via U.S. Mail
Robert L. Widener (w/Petition and Appendix)
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Janice Barry, Legal Secretary
Haynsworth Sinkler Boyd, P.A.

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ONE NORTH MAIN, 2ND FLOOR (29601-2772)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT DIAL NUMBER 864.240.3220
EMAIL sspruill@hsblawfirm.com

July 17, 2018

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Re: *Commissioners v. City of Fountain Inn*
Appellate Case No. 2015-001894

Dear Mr. Shearouse:

Enclosed for filing, please find an original and seven (7) copies of Appellant's Petition for Writ of Certiorari, the unbound original and one bound copy of the Appendix in the above-referenced matter, together with our Proof of Service of same. Also enclosed is our firm's $100 check to cover the cost of the filing fee. Please return clocked copies to me via our courier.

By copy of this letter, I am serving a copy of the Petition on all counsel of record as well as the Clerk of the Court of Appeals.

If you have any questions, please give me a call.

Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

SPS/jmb
Enclosures

cc: Bernie W. Ellis (via U.S. Mail)
Robert L. Widener (via U.S. Mail)
The Hon. Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals (via hand delivery)
David W. Holmes (via e-mail only davidholmes@holmes-law.com)