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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, .....Petitioner.

**BRIEF OF PETITIONER**

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## STATEMENT OF ISSUES

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?

## STATEMENT OF THE CASE

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 for the provision of natural gas services in an area located outside the boundaries of Fountain Inn or Laurens. (App. at 113-22). It further sought an injunction barring Fountain Inn from providing natural gas service within that area without the permission of LCPW.<sup>1</sup> 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 reflect a meeting of the minds, was illegal, and was barred by the doctrine of unclean hands. (App. at 123-31).

This matter was tried before the Hon. J. Cordell Maddox, Jr. on March 20, 2014. Prior to trial, each party submitted a pre-trial brief addressing its legal arguments. (App. at 232-41; 242-54). At the close of the evidence, the trial court provided the parties the opportunity to submit post-trial briefings. (App. at 436:5-441:13; 268-330). After receiving these materials, the trial court issued an order dated September 24, 2014 (“Order”). (App. at 102-11). 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.” (App. at 110). The trial court further declared that Fountain Inn “may not provide natural gas service in that area without the consent of LCPW.” (*Id.*).

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<sup>1</sup> The Complaint alleges causes of action for breach of contract and promissory estoppel; those claims, however, were withdrawn at trial. (App. at 104, n. 3; 419:14-424:19).

After receiving the Order on September 29, 2014, Fountain Inn served a timely motion to alter or amend on October 8, 2014. (App. at 324-26). 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. (App. at 112). 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 § 5-7-60, 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. (App. at 18-19). This Petition followed.

### **FACTS**

LCPW is the entity established by the City of Laurens to provide combined utility services, including water, sewer, electricity, and natural gas. (App. at 102; 385:4-6). It is dependent on the City of Laurens for bond funding. (App. at 385:21-23). It is not a creature of Laurens County, nor is it a public service district. Fountain Inn also provides natural gas services. Both LCPW and Fountain Inn purchase natural gas from the Transco pipeline located within Fountain Inn. (App. at 360:14-361:14; 411:21-412:5; 421:22-25).

Both parties provided service along the I-385 corridor. (*See* App. at 349:10-350:6). Over the years and 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. (App. at 103; 336:20-25). 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”). (App. at 444-46). After that time, the testimony was only that the parties generally attempted to respect the line.<sup>2</sup> (App. at 353:2-5; 354:23-355:2). The testimony further reflects that there were exceptions to which entity provided service on which side of the line and that there were disagreements about where the alleged boundary line ran. (App. at 358:25-359:9; 417:6-13; 426:20-427:16; 466). As noted by the trial court, there was overlap along the alleged boundary line. (App. at 103).

In 2011, the Laurens County Development Corporation announced plans for a new industrial park located about three miles from Fountain Inn and fifteen miles from the City of Laurens (“industrial park” or “disputed area”). (App. at 424:2-6). The proposed industrial park is situated on the LCPW side of the alleged boundary line. This area of northern Laurens County was largely undeveloped. (App. at 410:12-18; 426:12-16). 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* App. at 381:11-13). LCPW has conceded in its Return to Petition for a Writ of Certiorari that “[t]he area within the confines of the planned park was not being served by anyone, because there was no one to serve.” (Return at 4). Fountain Inn was asked to submit a bid to provide natural gas service by the developer of one of the projects within the proposed

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<sup>2</sup> As testified by a former LCPW general manager, “it’s a difficult line to follow, but we try to, yes, sir.” (App. at 378:10-20).

industrial park. (App. at 424:22-425:5). As such, Fountain Inn felt it was free to compete for this new business. (App. at 426:1-16). LCPW brought this action to prevent that competition.

Both LCPW and Fountain Inn built new service lines to serve the new industrial park. (App. at 433:25-434:8). At the time of trial, both Fountain Inn and LCPW had a contract to serve and were serving a customer in the new industrial park. (App. at 379:25-380:18; 452-56).

## ARGUMENT

Throughout this case, LCPW has simultaneously disavowed that there was a formal boundary agreement between the parties while at the same time arguing that the parties had established a boundary line between themselves. The same logical disconnect underlies the rulings of both the trial court and the Court of Appeals in this case.

LCPW's problem is that it cannot establish that it was serving the area in question without reference to the 1992 Map (because it admits no one was providing service to the specific area), but it knows that the parties did not enter a formal agreement and could not have entered a formal agreement permanently dividing the area. If there was not a boundary agreement, the 1992 Map is a nullity and does not reflect where service was being provided.

When the law and the facts of this case are reviewed under the proper standards, the rulings of the Court of Appeals and the trial court should be reversed because no party has established a designated service area based on the 1992 Map with respect to the disputed industrial park or any other area outside their respective city limits that is otherwise unserved. As a result, both parties should be free to serve new customers by contract consistent with S.C. Code Ann. § 5-7-60.

**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 applicable in cases that present a question of law in an action in equity.**

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 not reversed on this point, any case raising questions of statutory construction runs the risk of being reviewed as an action at law.

Here, LCPW seeks to exclude Fountain Inn from providing natural gas service in the industrial park. Realizing that LCPW and Fountain Inn did not and could not have made an agreement assigning natural gas territory in perpetuity, LCPW dropped its claims for breach of contract and promissory estoppel at trial. (App. at 9, n. 3; 419:14-420:19). The only remaining claims were for declaratory judgment and injunctive relief based on LCPW's theory that it had established a designated service area pursuant to S.C. Code Ann. § 5-7-60 and therefore could exclude Fountain Inn from providing natural gas service on the LCPW side of the line.

Given LCPW's claim for injunctive relief accompanied by a request for statutory construction, this Court's review is in equity. The injunctive relief is not incidental—LCPW's main purpose in filing this action was its desire to enjoin Fountain Inn from competing for customers in the disputed area. Thus, an equitable standard of review applies. *Doe v. S. C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645-46, 557 S.E.2d 670, 672 (2001)

(holding that since “main purpose” of action was for injunctive relief, the appellate court could take its own view of the facts).

The cases previously cited by LCPW in arguing for a standard of review at law are inapplicable because in those cases the question of statutory construction was coupled with relief at law. (See App. at 48-49). For instance, *Normandy Corp. v. S. C. Dep't of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009) arose in the context of condemnation. As stated in *Normandy*, “[c]ondemnation actions are actions at law.” *Id.* at 402, 688 S.E.2d at 141 (citing *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986)). *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998) holds that an action seeking relief under the Omitted Spouse Statute is an action at law; importantly however, the case cited by *In re Timmerman* for that proposition, *Williams v. Williams*, 329 S.C. 569, 573, 496 S.E.2d 23, 25-26 (Ct. App. 1998), *rev'd on other grounds*, 335 S.C. 386, 517 S.E.2d 689 (1999), makes the crucial distinction that in a case where equitable relief is sought, as is the case here, the action is in equity. In *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008), the request for declaratory relief was tied to a contract dispute, which sounds at law. Lastly, *State v. Petty*, 270 S.C. 206, 208, 241 S.E.2d 561, 562 (1978) arose from an action for forfeiture of property. “An action for forfeiture is a civil action at law.” *Ducworth v. Neely*, 319 S.C. 158, 162, 459 S.E.2d 896, 899 (Ct. App. 1995).

This is not an action seeking to assert a claim under a statute, but rather an action seeking injunctive relief based on the construction of a statute. As such, the standard of review is equitable and this Court is not bound by the trial court’s factual findings. Regardless, the parties agree that the construction of S.C. Code Ann. § 5-7-60 presents a question of law for the Court. See *Boggero v. S. C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015); *Town of*

*Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.”).

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. 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.

For these reasons, this Court should find that the facts of this case are subject to an equitable standard of review and either address the case in full on the merits or remand this matter to the Court of Appeals to make that determination.

**II. The Court of Appeals erred in finding that 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.**

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. Here, the record is clear that no one was serving the area in question at the time this suit was filed.

Contrary to this fact, the Court of Appeals and the trial court accepted LCPW's argument that it was serving a general area based on a 1992 Map that LCPW and Fountain Inn never formally adopted and could not have formally adopted as discussed below. 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.<sup>3</sup>

**A. The parties' ability to serve outside their own municipal limits is limited.**

Generally, the powers of a municipality are limited to the area within its municipal limits. See S.C. Code Ann. § 5-7-30 ("Each municipality . . . may enact regulations, resolutions, and ordinances, . . . including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order *in the municipality* or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience *of the municipality* or for preserving health, peace, order, and good government *in it . . .*") (emphasis added). As set forth in *Childs v. City of Columbia*, 87 S.C. 566, 570, 70 S.E. 296, 298 (1911),

All powers and privileges conferred by the Constitution and statutes on municipal corporations must be held to be limited in their exercise to the territory embraced in the municipal boundaries and for the benefit of the inhabitants of the municipality, unless the Constitution or statute expressly provides that such powers and privileges may be exercised beyond the corporate boundaries, or for the benefit of nonresidents.

A city is not required to serve customers outside its limits. 12 *McQuillin Mun. Corp.* § 34:112 (3d ed.) (citing *Childs*). When it undertakes to do so by contract, a city is not required to charge reasonable rates but rather "is to be guided by the best interests of the municipality and has an obligation to sell [its service] for the highest price obtainable." *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). Any duties to customers located outside

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<sup>3</sup> 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." (App. at 440:5-7).

the municipal limits “arise[] only by contract.” *Sloan v. City of Conway*, 347 S.C. 324, 330-31, 555 S.E.2d 684, 686 (2001).

LCPW argues that it has a “designated service area” and the right to exclude Fountain Inn from that area by operation of S.C. Code Ann. § 5-7-60, which was enacted as part of Home Rule (Act No. 283, 1974 S.C. Acts 724). This statute reads, in pertinent part, as follows:

Any municipality may perform any of its functions, furnish any of its services . . . 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 . . . . 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.

Pursuant to this section, a municipality may provide services outside its city limits by contract unless the customer is located within the designated service area of another municipality or political subdivision.

**B. LCPW has not established a designated service area.**

This case involves the ability of Fountain Inn and LCPW to contract with customers located outside their respective boundaries. This is not a case where two competing bodies are attempting to govern the same area.<sup>4</sup> Neither party has governing authority in this unincorporated area of Laurens County.

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<sup>4</sup> Therefore, cases like *Wagener v. Smith*, 221 S.C. 438, 71 S.E.2d 1 (1952), which treat the issue of two parties seeking to govern the same area are inapplicable.

The parties have a fundamental dispute about the construction of S.C. Code Ann. § 5-7-60. Fountain Inn has argued throughout this case that LCPW has not created a designated service area with respect to the disputed area because it was not serving customers there and because there was no certification from the governing body of that area as to the provision of service, budgeting of funds, or application for funds. LCPW has taken the position that it has a designated service area that expands to cover most of Laurens County, and as such, it can exclude any other municipal natural gas providers from that area.<sup>5</sup>

**1. LCPW is not the governing body of the area in question.**

As set forth in S.C. Code Ann. § 5-7-60, a designated service area is “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.*” (Emphasis added). This language makes it clear that the applicable governing body for purposes of certification is that which has governing authority over the area in question. Here, that would be Laurens County. Therefore, to trigger the designated service area portion of the statute, Laurens County would need to certify that natural gas service is already being provided in the area or that funds have been applied for or budgeted. There is no evidence of any certification by Laurens County.

Under this construction, Laurens County Council would be politically accountable with respect to the service provided and any rates charged. This is consistent with the general principles of Home Rule. S.C. Const. art. VIII, § 7 (“The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties . . . .”);

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<sup>5</sup> As acknowledged by the trial court, municipal providers can and do compete with private natural gas companies. (App. at 109, citing *Glendale Water Corp. of Florence v. City of Florence*, 274 S.C. 472, 474, 265 S.E.2d 41, 42 (1980)). Fountain Inn competes with Piedmont Natural Gas, and in those cases, the customer has a choice of providers. (App. at 429:17-25).

*Knight v. Salisbury*, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974) (“Article VIII reflects a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level.”).

LCPW, on the other hand, is not politically accountable to customers outside the City of Laurens, and is not required to provide service or to charge a reasonable rate, but rather is guided by its obligations to maximize its rates for the benefit of the residents of the City of Laurens. Given this background, it is nonsensical that LCPW could proclaim a monopoly over most of Laurens County, an area for which it is not politically accountable and over which there is no limit to what it can charge customers. This leaves customers without a choice, either practically or politically. This cannot have been the intent of the General Assembly. Accordingly, the trial court erred in determining that the City of Laurens or the LCPW, and not Laurens County, was the appropriate governing entity to certify as to the disputed area.<sup>6</sup>

“[C]ourts may not enlarge by construction the language of a clear and unambiguous statute.” *Jordan v. Montgomery Ward & Co.*, 442 F.2d 78, 82 (8th Cir. 1971). As stated by this Court:

[C]ourts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The

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<sup>6</sup> The Court of Appeals looked instead to the provision of service in the area without ruling on the larger certification issue and declined to grant rehearing on this point despite the arguments of Fountain Inn. (App. at 9; 14-15; 18).

former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the powers of government among three departments, the legislative, the executive, and the judicial.

*Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) (quotation omitted); *Bentley v. Spartanburg Cnty.*, 398 S.C. 418, 426, 730 S.E.2d 296, 301 (2012) (“[W]e are interpreters not legislators and are bound by the language of [the statute] as written.”). Therefore, the focus here is on the language of the statute.

As set forth in § 5-7-60, “[a]ny municipality may perform any of its functions, furnish any of its services . . . and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract . . .” Thus, the statute is designed to allow a municipality to provide its services outside its limits by contract.

The statute then creates a limited exception to this general rule as follows:

except within a designated service area for all such services of another municipality or political subdivision . . . . 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.

As an exception, this portion of the statute should be construed narrowly in order to give effect to the statute’s primary goal—allowing municipalities to provide services outside their boundaries by contract. See *Olmstead v. Shakespeare*, 348 S.C. 436, 441, 559 S.E.2d 370, 373 (Ct. App. 2002); 82 C.J.S. *Statutes* § 371 (a),(c) (1999) (“Since an exception must be construed in conformance with the purpose and meaning of the statute in which it is contained, all doubts and implications must be resolved in favor of the general statute or rule, rather than in favor of the exception.”). Under the plain language of the statute, service by contract outside municipal

boundaries is the rule and designated service areas are the exception. LCPW has flipped this rule and argued that the primary focus should be the creation of designated service areas rather than the ability of municipalities to provide services outside their municipal boundaries by contract.

The general rule of service by contracts makes sense given the common law backdrop for services extended by cities outside their limits. Such service is not mandatory, is controlled by contracts, and is not subject to any requirement of reasonableness. *Childs v. City of Columbia*, 87 S.C. 566, 570, 70 S.E. 296, 298 (1911); *Sloan v. City of Conway*, 347 S.C. 324, 330-31, 555 S.E.2d 684, 686 (2001). In addition, cities have a duty to prioritize revenues for their taxpayers over the needs of non-resident customers. *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). In such a case, if service is limited to contracts, customers are free to pursue other providers in the event they are unhappy with the service or the rates charged. Thus, Fountain Inn's policy arguments are consistent with the plain language of the statute and the policies underlying home rule. It is LCPW's arguments that are inconsistent.

The language of the exception requires two things in order to establish a designated service area: (1) "an area in which the particular service is being provided or is budgeted or funds have been applied for"; and (2) "as certified by the governing body thereof." S.C. Code Ann. § 5-7-60. The requirement that the certification be made by the governing body for the area aligns with the general principles of home rule, which was designed to bring local government back to local governing bodies rather than concentrating those powers in the county's legislative delegation. *Knight*, 262 S.C. at 571, 206 S.E.2d at 877 ("It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level."). The designated service area exception was designed to protect existing customer

contracts and municipal or special purpose district boundaries, not act as an offensive tool for the creation of extra-territorial monopolies. *See Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984).

Given this backdrop, it stands to reason that the local government for the area in question must be the one providing any certifications with respect to services for its citizens. LCPW seeks to remove the local “governing body thereof” from the equation. Such a result would be absurd and is inconsistent with home rule and the plain language of the statute.

LCPW’s argument, when taken to its logical end, would allow a city to establish a designated service area in any part of the state simply by budgeting funds to provide such service, provided someone else was not already serving there. Counsel for LCPW acknowledged the possible extremes to which a designated service area might be carried under its construction when he mused at trial “does this mean it goes on forever, does this mean we can go all the way to Charleston.” (App. at 440:5-7). By way of example under LCPW’s approach, LCPW could certify a designated service area in Charleston County and exclude others from serving there without ever entering a contract or ever providing a service as long as the area was not a part of the designated service area of another entity. This cannot be the rule.

LCPW has also pointed to its own certification, issued by resolution the same day this action was filed. (R. at 362-364). The evidence showed that LCPW has not budgeted funds specifically for providing service in the area where the new industrial park is located. Instead, it has budgeted funds to maintain a safe and consistent supply of gas to the City of Laurens and all LCPW customers. (App. at 360:14-361:14). Coincidentally, those transmission lines cross northern Laurens County on their way to the Transco pipeline located within Fountain Inn. (*Id.*). Under LCPW’s logic, it has also budgeted funds to provide natural gas service within Fountain

Inn by virtue of having its transmission line there. Quite simply, LCPW has expended funds to get natural gas from the pipeline located in Fountain Inn to the City of Laurens, which required running lines through northern Laurens County. This does not mean all of the area located between Fountain Inn and the City of Laurens is LCPW's designated service area. There are no specific certifications as to the disputed area with respect to customers served or expenditures made or budgeted.<sup>7</sup> Thus, LCPW attempted to proclaim a designated service area by fiat the very day this action was filed. This cannot be the way § 5-7-60 was designed to operate.

**2. No one was serving the area in question at the time this action was filed.**

Even if this Court agrees with the Court of Appeals that no certification is required in cases where service is already being provided, there is no evidence that LCPW was actually providing service to customers in the disputed area. Instead, LCPW presented evidence that it generally served the entire area on its side of the line as shown on the 1992 Map. The trial court and the Court of Appeals, in ruling that there is a boundary line as shown on the 1992 Map, effectively ruled that the parties made a binding agreement as to the disputed area.<sup>8</sup>

There is no dispute that both parties receive their natural gas supply from the Transco pipeline in Fountain Inn and that both parties had infrastructure near the industrial park. (App. at 421:22-25; 360:17-20; 433:25-434:8). Further, there is no dispute that the disputed area was

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<sup>7</sup> Similar to the testimony about service provided, the testimony with respect to funds and budgeting relates to LCPW's entire area and not the disputed area specifically. (App. at 416:13-23). The disputed area coincidentally lies along LCPW's supply lines, which have their terminus within Fountain Inn. (App. at 411:21-414:3; 451). Again, LCPW's argument on this point rests on the 1992 Map. LCPW spent funds to maintain a supply of natural gas to its system, but it has not identified any customers in the disputed area.

<sup>8</sup> Footnote 9 of the opinion of the Court of Appeals again gives effect to the line shown on the 1992 Map, while at the same time declining to reach the issue of whether the parties could have made such agreement. If the parties could not reach such an agreement, how can the line give rise to an enforceable boundary?

previously undeveloped. (*See App.* at 381:11-13; 410:12-18; 426:12-16; 466). Neither party presented evidence of contracts or customers served in the disputed area prior to the establishment of the industrial park. LCPW instead presented general testimony that it served throughout its “territory” as shown on the 1992 Map. (*See App.* at 355:7-9; 103; 106).

No one was serving the area in question at the time this industrial park was announced. 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. 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.

In order to get around these undisputed facts, LCPW, the trial court, and the Court of Appeals relied on the 1992 Map as setting the boundary between the parties. As found by the trial court, “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 [1992 Map], is the LCPW’s service area for furnishing natural gas . . . .” (*App.* at 102). The trial court’s order does not contain any rulings specific to any customer or the area in question. (*App.* at 103; 108-09). The Court of Appeals also referenced the 1992 Map as evidence supporting the trial court’s finding that LCPW was providing service in the area. (*App.* at 9).

However, the 1992 Map is a nullity. It stems from an agreement that LCPW and Fountain Inn could not have made as a matter of law, and as a result, the trial court’s order and the opinion of the Court of Appeals gives effect to an invalid agreement. In other words, LCPW is being allowed to sneak through the back door what would not fit through the front. The parties could not agree to a boundary, but LCPW has argued and the lower courts have found that the 1992 Map

creates a boundary line—despite the fact that there was not a valid agreement and the parties could not have made such an agreement.

LCPW does not appear to dispute that the parties could not have made a long-term agreement with respect to service areas for natural gas service and made no argument on this point to the Court of Appeals. (App. at 55-56). This is because the law is well established that such an agreement would be null and void. *See, e.g., Cunningham v. Anderson Cnty.*, 402 S.C. 434, 441-50, 741 S.E.2d 545, 550-54 (Ct. App. 2013), *aff'd in part and rev'd in part on other grounds by* 414 S.C. 298, 299 n.1, 778 S.E.2d 884, 885 n.1 (2015) (dismissing writ of certiorari on this issue); *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-82, 480 S.E.2d 728, 731-32 (1997); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 131-36, 459 S.E.2d 876, 880-83 (Ct. App. 1995) (“*Cowart I*”), *aff'd* 324 S.C. 239, 241-42, 478 S.E.2d 836, 837-38 (1996) (“*Cowart II*”); *Newman v. McCullough*, 212 S.C. 17, 25-26, 46 S.E.2d 252, 256 (1948). With respect to the service at issue here, the power to buy and sell natural gas is a public and governmental function, and as such would fall under this general rule. *See Boyce v. Lancaster Cnty. Natural Gas Auth.*, 266 S.C. 398, 401, 223 S.E.2d 769, 770 (1976), *overruled on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Moreover, the alleged agreement was not ratified by Fountain Inn’s City Council (App. at 368:18-23; 103) and was only ratified by LCPW the day this action was filed. (App. at 457-59).

In determining that the 1992 Map established a boundary, LCPW, the circuit court, and the Court of Appeals all focus their analysis of S.C. Code Ann. § 5-7-60 on the establishment of designated service areas rather than the generally ability of municipalities to provide service outside their municipal limits by contract. 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).

A review of the cases construing § 5-7-60 emphasizes the contractual nature of service outside municipal limits. *See Sloan v. City of Conway*, 347 S.C. 324, 328, 555 S.E.2d 684, 686 (2001) (“South Carolina Code Ann. § 5-7-60 (1976), which was enacted as part of the Home Rule Amendment, provides generally that a municipality may contract to furnish and charge for any of its services outside its corporate limits.”); *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993) (“South Carolina Code Ann. § 5-7-60 (1976) provides: Any municipality may perform any of its functions, furnish any of its services ... and make charges therefor ... in areas outside the corporate limits of such municipality by contract with any individual...”); *Carolina Power & Light Co. v. Darlington Cnty.*, 315 S.C. 5, 8, 431 S.E.2d 580, 582 (1993) (quoting *City of Darlington v. Kilgo*, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990) and finding that “[the] legislative intent [of S.C. Code Ann. §§ 4-19-10 and 5-7-60] was to allow municipalities to continue to offer fire protection service in areas previously served under *contract*, and that such areas could not be included in any county district plan without prior agreement with the municipality.”). Here, Fountain Inn’s argument comports with this basic rule. Both LCPW and Fountain Inn should be free to contract in this area, as it does not fall within a designated service area. This competition would protect customers from being charged unreasonable rates by a monopolist that is not politically accountable to those customers.

The Court of Appeals generally discussed designated service areas without any real analysis of the facts of this case beyond the 1992 Map. (App. at 5-9). The trial court relied heavily on two cases in its discussion of designated service areas, each of which is distinguishable from

the instant case.<sup>9</sup> (App. at 106-09). These cases, when read as a whole, support Fountain Inn's arguments.

The first, *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), involved a city that sought to expand its services outside its city limits and within the Spartanburg Sanitary Sewer District ("Sewer District"), a governmental entity created by the General Assembly for the defined purpose of providing sewer service within its defined boundaries (Act No. 1503, 1970 S.C. Acts 3336). The Sewer District, as the governing body for the provision of sewer services within its boundaries, provided evidence that it had constructed lines to handle all the wastewater needs within the Sewer District's boundaries. *Id.* at 71-72, 321 S.E.2d at 261-62. The Supreme Court found this met the "designated service area" definition provided in § 5-7-60. *Id.* at 72, 321 S.E.2d at 261. LCPW could make similar arguments if Fountain Inn sought to provide services within the City of Laurens; however, in this case, LCPW is not the governing body with respect to the area in question. Therefore, it has not established a designated service area.

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<sup>9</sup> The trial court also cited *Mathis v. Hair*, 358 S.C. 48, 594 S.E.2d 851 (Ct. App. 2003). (App. at 108). *Mathis*, however, does not arise under § 5-7-60, and the trial court failed to provide the full context for the citation, which is as follows:

Section 5-7-60 provides in part that any municipality may provide its services outside its corporate limits by contract, and the statute defines a designated "service area" to mean the area in which a particular service is being provided. S.C. Code § 5-7-60 (1977); *see also City of Darlington v. Kilgo*, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990) (area outside cities' boundaries that cities provided limited fire protection to pursuant to contract was a "service area" of the cities and thus could not be included in the county fire district plan without prior agreement with the city).

*Id.* at 53, 594 S.E.2d at 854. Thus, *Mathis* is consistent with Fountain Inn's arguments relating to § 5-7-60 and *City of Darlington*.

The trial court also cited *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990). In that case, two cities, Hartsville and Darlington, were each providing fire protection services by contract within a five-mile radius of their respective city limits. *Id.* at 42, 393 S.E.2d at 377. Darlington County sought to include these areas in a new countywide fire protection district (“District”), which was to include all unincorporated areas of the county. *Id.* Balancing both a fire protection statute and § 5-7-60, the Supreme Court upheld the cities’ contracts within the disputed area, holding “[i]t is our view that S.C. Code § 4-19-10(b) protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in the absence of an agreement, newly created county fire districts must exclude areas served by cities under contract.” *Id.* at 43, 393 S.E.2d at 378.

This Court later clarified the significance of contracts in the companion case of *Carolina Power & Light v. Darlington Cnty.*, 315 S.C. 5, 431 S.E.2d 580 (1993). In that case, a customer located within the District sought to be excluded from the District and any tax obligations it imposed. *Id.* at 7-8, 431 S.E.2d at 581. As framed by the Supreme Court, the only question was “whether CP & L had a valid contract for fire protection service which would prevent the inclusion of CP & L in the new Darlington Fire Protection District under S.C. Code Ann. §§ 4-19-10 and 5-7-60 (1976).” *Id.* at 8, 431 S.E.2d at 582. In answering that question, the Court stated, “the statutes as interpreted in *Kilgo, supra*, clearly require a valid contract with the city to avoid inclusion in the [District].” *Id.* at 9, 431 S.E.2d at 582. “By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established.” *Id.* Similarly, in *City of Spartanburg v. Cnty. of Spartanburg*, 303 S.C. 393, 394-95, 401 S.E.2d 158, 159 (1991), the Supreme Court distinguished *City of Darlington* and found that a city could not challenge the creation of a special taxing district to provide fire protection

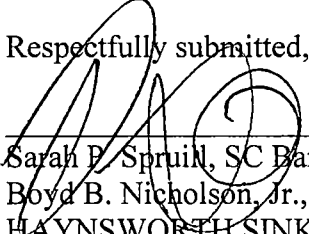
services outside the city's limits with respect to a former city customer with which the city no longer had an existing agreement.

Thus, the inquiry in these cases focuses on customer contracts and protection of existing customer rights. The evidence in this case shows that neither party had existing contracts within the proposed industrial park; thus, either party should be free to pursue those customers pursuant to § 5-7-60.

### CONCLUSION

For all of these reasons, the opinion of the Court of Appeals in this matter should be reversed. Fountain Inn urges this Court to enter a full ruling on the merits of this case based on its equitable standard of review. When the correct standard is applied, Fountain Inn believes the correct ruling is that no party has established a designated service area to the area in question and that both parties may serve the area by contract as contemplated in S.C. Code Ann. § 5-7-60. In the alternative, Fountain Inn asks that this case be remanded for the Court of Appeals to apply the correct standard of review and issue a ruling on the merits of the arguments presented by Fountain Inn.

Respectfully submitted,



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January 17, 2019  
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

**JAN 22 2019**

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

**S.C. SUPREME COURT**

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.

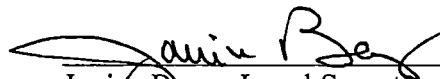
City of Fountain Inn, South Carolina, ..... Petitioner.

**PROOF OF SERVICE**

I certify that I have served the *Brief of Petitioner City of Fountain Inn's* on the following parties on this the 17th day of January 2019, by mailing a copy of the same via United States Mail, postage prepaid, to the following:

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