

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LAURENS COUNTY
In the Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 27917 (S.C. Sup. Ct. filed Sept. 18, 2019)
Supreme Court Case No. 2018-001309
S.C. Ct. App. Case No. 2015-001894
Opinion No. 5559 (S.C. Ct. App. filed May 16, 2018)
Lower Court Case 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.

PETITION FOR REHEARING

Robert L. Widener
Burr & Forman, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Bernie W. Ellis
Burr & Forman, LLP
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

Pursuant to Rules 221 and 240, SCACR, the Respondent (LCPW) respectfully submits the Petition for Rehearing in *Commissioners of Public Works v. City of Fountain Inn*, Op. No. 27917 (S.C. Sup. Ct. filed Sept. 18, 2019) (Shearouse Adv. Sh. No. 37 at 7-17), hereinafter cited as “Adv. Sh. at ____.” For the reasons set forth below and LCPW’s Brief of Respondent before this Court, LCPW respectfully requests that this Court grant rehearing, withdraw its opinion in this matter, and issue an amended opinion that affirms the Court of Appeals and the Circuit Court.

INTRODUCTION

The Court’s ruling will send (and has sent) shock waves through the local government community in South Carolina. It dramatically changes the way in which cities provide services outside their city limits and will, therefore, dramatically change the services many citizens and businesses can expect to receive in the future. Municipal service areas created under § 5-7-60 exist throughout the State without any county certification, and their continued existence is now in jeopardy, as are the services long enjoyed by citizens in those areas.

For the first time in the long history of § 5-7-60, counties now control the creation and scope of municipal service areas throughout the entire state for natural gas, water, sewer, electricity, and numerous other municipal services. This Court has granted this power to counties under § 5-7-60, despite the fact that no statute in Title 4 of the South Carolina Code does so. Title 4 contains the statutes whereby the General Assembly fulfilled its constitutional mandate to provide for county powers by general law. Yet, this Court has concluded that the General Assembly intended to create and grant a sweeping new power to counties in part of a sentence in a Title 5 statute on the powers of municipalities. Had the General Assembly intended to use such an unlikely vehicle for creating a far-reaching county power, it would have at least said so expressly by saying “county” rather than “governing body thereof.”

Moreover, this Court's ruling will likely create dangerous conditions throughout the State that will threaten life, limb, and property. As acknowledged by this Court, its ruling will allow cities to compete for customers in the same area, which will necessarily result in multiple supply lines and service lines from different providers being run near and even over each other. The resulting danger of accidental gas line cuttings is obvious and unlike water lines, which simply get things wet when cut, things blow up when a gas line is cut. Also, other problems arise with gas leaks and the like. For example, it will be more difficult to identify the provider so that the problem can be remedied as quickly and safely as possible.

SUMMARY OF ARGUMENT

This majority's opinion rests upon five basic rulings. First, the majority held that the "certification" requirement in § 5-7-60 applies to all three statutory methods for establishing a municipal service area. This was error because, *inter alia*, this ruling ignores the absence of any commas in the sentence which, under the most basic and ordinary rules of English grammar and punctuation, means the "certification" clause plainly applies only to the last method set forth in the sentence, *i.e.*, that "funds have been applied for" to provide service in the area. If the punctuation and lack of punctuation in a statute or any other writing before a court is now to be ignored, the entire framework for writing, interpreting, and enforcing statutes, contracts, and the like will fall into complete disarray. See Arg. I, *infra*, at p. 5.

Second, the majority held that the certification required by § 5-7-60 must be done by the county, because to allow certification by the city would yield absurd results. This "county certification" issue was not properly before this Court because, *inter alia*, Fountain Inn did not include it in a Question Presented in its certiorari petition and, more importantly, did not make any "county certification" arguments in the petition. In any event, the majority's ruling was error

because, *inter alia*, requiring county certification yields an unworkable system that will defeat the purpose of § 5-7-60, which is to encourage and incentivize cities to provide their services outside their limits so that county residents can enjoy the benefits of those services. Moreover, in this case, giving the county the power to create, designate, deny, etc. certification for natural gas service areas creates the manifestly absurd result of giving the county unilateral power over gas service areas in the county when, at the same time, the South Carolina Constitution expressly prohibits counties from providing natural gas service to county residents. See Arg. II, *infra*, at pp. 6-11.

Third, the majority relies upon a parade of horrors like monopoly, lack of political accountability, and the like. This was error because, *inter alia*, these are public policy matters for the General Assembly, not courts. Also, this was error because the majority's findings and concerns are incorrect. For example, § 5-7-60 does not grant a monopoly to the city – it simply prohibits another city from coming into the area – private providers remain free to compete for customers in the area. See Arg. III, *infra*, at p. 11.

Fourth, the majority analyzes several cases to “distinguish” the *Kilgo* opinion and to also find that its precedential value has eroded. Respectfully, the majority's reading of those cases is mistaken, and the salient rulings in those cases fully support the decisions by the trial court and the Court of Appeals, and require affirmance of those decisions. See Arg. IV, *infra*, at pp. 12-16.

Fifth, the majority bolsters its analysis and conclusion by finding that affirmance of the circuit court and the Court of Appeals would effectively enforce a nonexistent and unenforceable contract between the parties. This analysis is simply wrong. The circuit court and the Court of Appeals expressly noted that their rulings were not based on any contract theory, and expressly bottomed their rulings on the application of § 5-7-60 to the undisputed facts of this case. See Arg. V, *infra*, at pp. 16-17.

ARGUMENT

I. The plain ordinary meaning of § 5-7-60 is that the “certification” requirement applies only to “funds applied for” phrase.

The fundamental issue in this case is the meaning of the following sentence in § 5-7-60: “[D]esignated 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.” (All emphasis added). The first question is whether the underlined phrase modifies (applies to) all of the italicized phrases or only the last one. There are no commas or other punctuation in this sentence, and the word “or” is used to separate the three phrases. Under the basic rules for writing and reading English, the absence of commas manifestly and only means that the certification phrase applies only to the “funds have been applied for” phrase. Moreover, the use of the word “or” between the italicized phrases likewise establishes three separate phrases, and the “certification” phrase is part of the third phrase only.

The majority overlooks these fundamental rules for writing and reading English to summarily find “a plain reading of the sentence indicates the [certification phrase] refers to all three [italicized] parts of the sentence.” The majority never explains why it refuses to apply fundamental rules of English grammar and punctuation to § 5-7-60, or why it refuses to recognize and apply the meaning and effect of the word “or.” By ignoring these rules, the majority has amended § 5-7-60 by judicial fiat to reach the desired result. If courts ignore the basic rules for writing, reading, and understanding English, and if the courts also ignore the importance and meaning of critical words like “or,” the guiding principle of determining legislative intent will give way to judicial legislation under the guise of interpretation.

II. The “county certification” issue was not properly before this Court, and imposing a “county certification” requirement creates an unworkable system that will frustrate the manifest purpose of § 5-7-60 and produce absurd results.

The majority’s “county certification” ruling is in error for several reasons. As an initial matter, this issue was never properly before the Court for the following reasons:

1. The trial court specifically rejected Fountain Inn’s “county certification” argument by repeatedly ruling that providing the service, standing alone and without any certification by anyone, was sufficient to establish a service area under § 5-7-60. On appeal to the Court of Appeals, Fountain Inn never expressly challenged this ruling. (See App. Br. in Ct. App., *passim*). Therefore, the trial court’s ruling became the law of the case and, right or wrong, required affirmance. *Eldridge v. Eldridge*, 728 S.E.2d 24, 28 (S.C. 2010). For a fuller discussion, see Resp. Br. in Ct. App. at 16-18 and Resp. Br. in Sup. Ct. at 16-17.

2. The Court of Appeals ruled that the certification requirement “only applies to the portion of the sentence stating ‘funds have been applied for’ and not the prior part of the sentence stating ‘an area in which the particular service is being provided.’” (Appx. 104). Thus, the certification requirement is required only when a city seeks to establish a service area based upon having applied for funds to provide the service. Fountain never specifically challenged this ruling in its brief (Pet. Br. *passim*) and, therefore, this ruling is the law of this case and, right or wrong, requires affirmance. *Eldgridge, supra*.

3. Finally, and most importantly, Fountain Inn’s certiorari petition contained only two “Questions Presented,” and neither question mentioned or otherwise included any “county certification” issue. (Cert. Pet. at 2). Moreover, Fountain Inn did not make any “county certification” arguments in its certiorari petition. (Cert. Pet., *passim*). Thus, no “county

certification” issue was ever before this Court. For a fuller discussion of this issue, see Resp. Br. in Sup. Ct. at 15-16.

In any event, this majority’s ruling that the county must issue the required certification is in error for the seven reasons set forth below.

(1) In the sentence immediately following the certification language, §5-7-60 specifically grants the governing body of the municipality with the designated service area the power to grant permission to other municipalities or political subdivisions to provide service in the designated service area.¹ It would be absurd to hold that only the county can create the municipal service area, but the municipality can grant other municipalities or political subdivisions permission to provide service in the area designated by the county without any input from or the permission of the certifying county. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014) (courts avoid interpretations that lead to absurd results).

(2) The cardinal rule of statutory interpretation is to give effect to the legislature’s intent, and the best evidence of that intent is the plain meaning of the words used in the statute. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 540 (S.C. 2014). The plain and ordinary meaning of “certify” is to “*authenticate or vouch for a thing in writing, [and to] attest as being true or as represented.*” BLACK’S LAW DICTIONARY (5th Ed.) at 207 (1979) (emphasis added).² Manifestly, one governing body cannot authenticate, vouch for, or attest to the truth of another governing body’s actions, budget, expenditures, or funding applications. This Court never explains how a county could ever do so. Counties do not have the power or knowledge to certify

¹ That sentence states: “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.”

² See also merriam-webster.com, giving the full definition of “certify” as “to attest *authoritatively*” and “to attest as *being true.*” (Emphasis added).

anything done by cities and, therefore, it is impossible for a county to issue any certification under § 5-7-60.³ It would be absurd for the General Assembly to condition the establishment of a designated service area upon the doing of an impossible act, because it would result in there never being a designated service area under § 5-7-60. Thus, the only reasonable reading of § 5-7-60 is that the certification must come from the governing body whose conduct is being certified.

(3) Were it true a county has the power and knowledge to *certify* a city's conduct and budget, requiring a county certification would nevertheless lead to an absurd result. A city does not have the power to compel a county to certify anything, much less the actions and budget of city itself. Nothing in § 5-7-60 requires a county to issue a certification if requested by city, even if the city indisputably establishes the facts to be certified. Thus, under this Court's ruling, counties now have unbridled control over the creation of a designated service area in the county. Nothing in § 5-7-60, which is a municipal power statute, even hints at granting such power to counties, and if the General Assembly intended for a county council to be the sole arbiter of municipal service areas within the county, "surely it would have said so," particularly in a municipal power statute. *Blackburn v. Daufuskie Is. Fire. Dist.*, 677 S.E.2d 606, 609 n.5 (S.C. 2009); *accord Estate of Guide v. Spooner*, 457 S.E.2d 623, 624 (S.C. App. 1995).

(4) Reading a "county certification" requirement into § 5-7-60 would frustrate and interfere with the General Assembly's purpose in providing for a "designated service area," which is to encourage municipalities to provide services outside their corporate limits. No municipality would spend its time, money, and resources to establish a "designated service area" under this

³ All of this also dovetails with the plain meaning of "designate," which is to "indicate, select . . . or set apart for a purpose" and to "make known." BLACK'S LAW DICTIONARY (5th Ed.) at 402 (1979) (emphasis added). By undertaking the actions specified in § 5-7-60 and thereafter certifying that it had done so, LCPW made known that it had selected and set apart an area for the purpose of providing natural gas service in the area. See also merriam-webster.com, giving the full definition of "designate" as "to indicate and set apart for a specific purpose" and "to point out the location of."

Court's "county certification" rule unless it was confident that the county would thereafter issue the requisite certification. The only way to achieve this would be a long-term, "designated service area" agreement with the county before providing the service or spending money to provide the service. But this type of agreement is impermissible, because it would extend beyond the tenure of the governing bodies' members. Moreover, § 5-7-60 plainly requires an after-the-fact certification. The only logical source for this certification is the governing body whose conduct is being certified.

(5) This majority bolsters its reading of § 5-7-60 with public policy arguments like political accountability, preventing monopolies, etc. Respectfully, such considerations are beyond the purview of this Court because:

- a. Public policy resides in the province of the General Assembly. *Brown v. Duke*, 270 S.E.2d 130, 132 (S.C. 1980).
- b. The wisdom of a statute is not subject to judicial review – such matters are within the sole province of the General Assembly. *South Carolina Dep't of Natural Resources v. Town of McClellanville*, 550 S.E.2d 299, 304 (S.C. (2001)); *Adkins v. Comcar Indus., Inc.*, 447 S.E.2d 228, 230 (S.C. App. 1994).
- c. The public policy decisions underlying a statute are likewise not subject to judicial review. *Hollman v. Bulldog Trucking Co.*, 428 S.E.2d 889, 893 (S.C. App. 1993); *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 382 S.E.2d 11, 14 (S.C. App. 1989).

The clear purpose of § 5-7-60 is two-fold: (1) grant municipalities the power to provide their services to areas outside their corporate limits; and (2) encourage them to do so by granting them a "designated service area" that is free from competition by any other municipality. The wisdom of this legislative decision on how to best implement the goals of § 5-7-60 is not subject to judicial review, even though it limits competition.

The public policy underlying § 5-7-60 is equally clear. Much of rural South Carolina did not and does not have access to services enjoyed by municipal residents. The General Assembly

enacted § 5-7-60 to encourage municipalities to make those services available to rural citizens. The incentive for municipalities to do so, and to undertake the expense of doing so (*e.g.*, building infrastructure), is the ability to acquire a designated service area that is free from competition by another municipality. Again, the wisdom of this incentive is not subject to judicial review.

Imposing a “county certification” requirement would discourage rather than encourage municipalities to undertake the expense of providing service to rural customers. The General Assembly clearly intended to encourage municipalities to do so, and any judicial interpretation of § 5-7-60 must follow and promote that legislative intent and policy decision. *Mumford*, 382 S.E.2d at 14. The trial court and Court of Appeals did so by rejecting Fountain Inn’s “county certification” argument, and this Court should also do so.

(6) The South Carolina Constitution specifically directs the General Assembly to provide for the powers of counties by general law. S.C. Const. art. VIII, § 7. The General Assembly satisfied this constitutional directive by enacting Title 4 of the South Carolina Code. No statute in Title 4 gives counties any power to determine or otherwise control the establishment of municipal service areas. Indeed, statutes in Title 4 require counties to respect and not interfere with the service areas of other political subdivisions (including municipalities). *E.g.*, § 4-9-30(11) and § 4-19-10. This Court, however, has ruled that a single phrase in a single sentence in a Title 5 statute on the powers of municipalities gives counties sweeping powers over the establishment and scope of municipal service areas. If the General Assembly had intended such power to reside in counties, it surely would have included that power in the laundry list of county powers in § 4-9-30, but it did not do so. At the very least, if the General Assembly intended to create this sweeping county power in a statute on municipal power it would have done so expressly, using the word “county” rather than the “governing body thereof.”

(7) The South Carolina Constitution expressly grants counties the power to acquire and operate certain public utilities, but it expressly prohibits counties from acquiring or operating natural gas systems. S.C. Const. art. VIII, § 16. Absent some express and very plainly stated directive, which does not exist in § 5-7-60 or any other statute, it is absurd to believe the General Assembly intended to give counties sweeping powers over the establishment and scope of municipal natural gas service areas, thereby allowing counties to do indirectly what they cannot do directly.

III. The majority’s “parade of horrors” does not exist, and the matters identified by the majority are public policy matters that reside in the sole discretion of the General Assembly.

The majority’s “parade of horrors” rests largely upon public policy considerations. As shown earlier, those considerations are in the province of the General Assembly, not the courts.

The majority also laments that “county” customers in a municipal service area will have no choice. Unless and until a municipality (or some private provider) makes natural gas service available, the “county” customers have to find power elsewhere (*e.g.*, propane, electricity). If a municipality establishes a service area that includes “county” customers, those customers have the option of contracting with the city, or they can choose to not contract with the city and continue with their current power sources.

Also, the majority laments cities having unfettered discretion to simply claim a service area, but this is simply wrong. To establish a service area, a city has to satisfy the requirements of § 5-7-60 by first providing the service, or budgeting to do so, or applying for funds to do – it cannot simply “claim” the service area.

IV. The majority's analysis of the opinion in *Kilgo* and subsequent opinions is based upon a mistaken reading of *Kilgo* and those subsequent opinions.

A. The majority's ruling is based upon a mistaken reading of *Kilgo*.

The majority distinguishes *Kilgo*⁴ as being decided solely on the basis of the contractual provisions in § 5-7-60 without any consideration of the service area provisions in § 5-7-60.⁵ Respectfully, the majority misread *Kilgo*.

The controlling question in *Kilgo* was whether the county's county-wide fire district, which it created under § 4-19-10, included the city's pre-existing fire district, which it had created under § 5-7-60. To answer this question, it was essential to determine the city's service area rights under § 5-7-60, because § 4-19-10 expressly protected a city's existing service area from any fire service district created under § 4-19-10.

In *Kilgo*, the city had a fire protection service area under § 5-7-60 that extended outside the city's corporate limits as measured by five road-miles from the city's fire station. 393 S.E.2d at 377; *id.* at 379 (Goolsby, A.A.J., dissenting).⁶ The county created a county-wide fire protection district under § 4-19-10 that included the unincorporated areas in the city's service area. *Id.* at 377. The city sued, and the trial court ruled that the county's fire district could not include the city's service area without the city's consent. *Id.* This Court affirmed.

Section 4-19-10 gave counties the power to create a county fire district but further provided that the county's "service area" could not include an "area" already being served by another

⁴ *City of Darlington v. Kilgo*, 393 S.E.2d 376 (S.C. 1990).

⁵ "*Kilgo* is easily distinguished. *Kilgo* involved a dispute between a county and a city which was resolved with reference to only the contract provision of section 5-7-60, without any consideration of the existence and implications of the designated service area provisions of the statute." Adv. Sh. at 13 (emphasis added).

⁶ *Kilgo* involved two cities (Darlington and Hartsville) with the same five-mile radius "designated service area." For ease of reference, this petition refers to them jointly as "the city."

political subdivision. *Id.* at 377-378 (emphasis added). The county argued that the city's service area did not qualify for protection under § 4-19-10, because the city's limited service in the area did not qualify as a "service area" under § 4-19-10. The dissent agreed with this argument, *id.* at 379-382, but the majority expressly rejected it. *Id.* at 378. The majority held that there was no conflict between the county's power under § 4-19-10 and "the [city's] *statutory rights under § 5-7-60.*" *Id.* at 378-379 (emphasis added). If there was "an existing *municipal service area* within the county," the county could not include that area in its fire district absent an agreement with the city. *Id.* at 379 (emphasis added).

The dispute between the dissent and the majority illuminates the salient point in *Kilgo*, to-wit: the city's service area included the entire area, regardless of the undisputed fact that most of the potential customers in the area did not have contracts with the city.

The city had contracts with only one-third of the customers in its service area. 321 S.E.2d at 377 n.1, 379-380. The dissent concluded that the service area protection afforded by § 4-19-10 extended only to those customers but did not otherwise extend to the five-mile radius area claimed by the city under § 5-7-60, *i.e.*, the county could include any part of the five-mile radius in its district except for customers with existing municipal contracts. *Id.* at 380-381. The majority rejected the dissent's analysis and conclusion, holding that the city's service area included the entire five-mile radius area. *Id.* at 378-379.

In short, and contrary to the majority's reading of *Kilgo*, defining the service area acquired by the city under § 5-7-60 was essential to the decision in *Kilgo*. Again contrary to the majority's reading of *Kilgo*, the city's service area was not limited to customers under specific contracts with the city. Rather, the city's service area was the entire five-mile radius area, including persons in that area who did not have a contract with the city. Thus, and again contrary to the majority's

reading of *Kilgo*, it was not resolved based solely on the contract provisions of § 5-7-60; it plainly rested on the existence of the service area acquired by the city under § 5-7-60; and it plainly protected the city's entire service area from encroachment by the county, including all potential customers in that area who did not have an existing contract with the city.

B. The majority misread the post-*Kilgo* opinions.

To support its reading of *Kilgo*, the majority concludes that subsequent cases have minimized any precedential force that *Kilgo* may have on the question of a municipal service area being more than simply customers with contracts.⁷ The majority relies principally upon the decision in *Carolina Power*⁸ but, the majority's ruling is based upon a mistaken reading of *Carolina Power*. Indeed, as shown below, the opinion in *Carolina Power* reaffirmed the earlier-noted rulings and analysis of *Kilgo* regarding the city's service area as including the entire five-mile area, not simply the customers with whom the city had an existing service contract.

The controlling question was whether the plaintiff (CP&L) was in the county's fire service district, it involved same county and city fire districts addressed in *Kilgo*. There were two basic questions. First, was CP&L located in the city's physical service area? If so, then CP&L was not in the county's fire district. Second, if CP&L was not in the service area, did it have a pre-existing contract with the city for fire services? If so, then again, CP&L was not in the county's fire district.

The court first ruled that CP&L was not in the city's physical service area that the court had protected from encroachment by the county in *Kilgo*. The city's service area was measured by five road-miles from the city's firehouse. CP&L was within five miles of the firehouse "as the

⁷ "Moreover, to the extent *Kilgo* was ever viewed as an authoritative interpretation of section 5-7-60 (rather than section 4-19-10 alone), its precedential force in that respect has been, quite frankly, minimized by subsequent case law that emphasizes the need for a contract to avoid being subsumed in the *county's* designated service area." Adv. Sh. at 13(underling added).

⁸ *Carolina Power & Light Co. v. Darlington County*, 431 S.E.2d 580 (S.C. 1993).

crow flies,” but it was not within five road-miles. Thus, CP&L was not in the city’s service area. 431 S.E.2d at 581. The court then turned to the separate and independent question of whether CP&L had a fire services contract with the city. The court found it did not. Therefore, CP&L was in the county’s district, because it was not in the city’s service area and did not have a service contract with the city. *Id.* at 581-584.

In short, and contrary to the majority’s ruling in the present case, nothing in *Carolina Power* minimizes the precedential force of *Kilgo*. To the contrary, the court in *Carolina Power* expressly relied upon and reaffirmed its “city service area” ruling in *Kilgo* to find that CP&L was not in the city’s service area. It was then, and only then, that the court turned to the independent question of whether CP&L had a contract with the city (which it did not).

The majority also cites *Sloan*⁹ and *Calaterra*¹⁰ as further support for not giving *Kilgo* precedential value. Adv. Sh. at 14. Nothing in either case supports any erosion of the ruling in *Kilgo*. Neither case cites or discusses the opinion in *Kilgo*. Neither case discusses, involves, or even mentions the creation, existence, or scope of a city service area under § 5-7-60. The only “city” issue in both cases was a customer’s challenge to the city’s water service rates, complaining that the city charged non-city customers more than city customers. In both cases, the courts held that the city could do so under a rule created by this Court. The only mention of § 5-7-60 was to note that the cities had, pursuant to this statute, contracted to provide water service to non-city customers. Here, no customer challenges the rates charged by either party, and neither party

⁹ *Sloan v. City of Conway*, 555 S.E.2d 684 (S.C. 2001).

¹⁰ *Calaterra v. City of Columbia*, 432 S.E.2d 498 (S.C. App. 1993).

challenges the rates charged by the other party. In short, *Sloan* and *Calcaretta* have nothing to do with the issues in the present case.¹¹

Finally, at two points in its discussion of the case law, the majority seems to place some analytical significance on this case being between two cities, whereas the cases discussed above were between a city and some other political subdivision. Adv. Sh. at 13, 14 & n.2. It is true that the present case appears to be the first case between two cities, but this “novelty” has nothing to do with the relevant issues. The controlling inquiry is whether LCPW acquired a service area under § 5-7-60. If it did, then Fountain Inn cannot provide service in that area. No one has ever disputed this, and § 5-7-60 plainly so provides.

V. LCPW’s argument is not dependent upon or tethered to any theory that the 1992 Map created or reflects a contractual agreement between LCPW and Fountain Inn.

At trial, LCPW expressly abandoned any contract theory and relied solely on its arguments under § 5-7-60. (Appx. 98 n.3]). The trial court did not base its ruling on any contract theory or any theory that the 1992 Map created an agreement between the parties. Rather, the trial court expressly and only ruled that LCPW has a designated service area under § 5-7-60 as applied to the undisputed facts in this case. (Appx. 96-105, *passim*). In like manner, the Court of Appeals expressly and only ruled that the trial court had correctly applied § 5-7-60 to the undisputed facts of this case, and it did not rely upon any contract theory or any theory that the 1992 Map created an agreement between the parties. (Ct. App. Op., *passim*).

¹¹ In a footnote, the majority ruled that LCPW’s misplaced its reliance on *Spartanburg Sanitary Sewer Service Dist. v. City of Spartanburg*, 321 S.E.2d 258 (S.C. 1984). Adv. Sh. at 14, n.2. The salient point in *Sanitary Sewer*, upon which the trial court relied, was that a political subdivision could create a statutory service area by building infrastructure in the area, even if it did not have existing customer contracts in that area. In other words, *Sanitary Sewer* demonstrated that statutory service areas are not limited to contracts or existing customers, which was the argument made by Fountain Inn on appeal. *Compare* Pet. Br. with Resp. Br.

Against the foregoing backdrop of the lower courts' actual rulings, which are the only reviewable issues before this Court, the majority wrongly concludes that LCPW's "claim" for a service area is "tethered to the 1992 Map" and accepting the claim would give formal legal effect to a contract never entered into by the parties. This is simply wrong. The 1992 Map was relevant solely because the parties had, in fact, provided gas service for 20 years in the areas marked on the map and, as shown earlier, actually providing service in an area is one (and the most common) way to acquire a service area under § 5-7-60.

LCPW did not seek any enforcement of the map as an agreement, nor did it pursue any other contract theory. In like manner, the circuit court and the Court of Appeals did not rely on any contract theory or any theory that the 1992 Map created an agreement. The majority has therefore reversed the lower courts for rulings they never made, and rejected arguments that LCPW never made to this Court or the lower courts.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in LCPW's Brief of Respondent before the Court, LCPW respectfully requests that this Court grant rehearing, withdraw its opinion in this matter, and issue an amended opinion that affirms the Court of Appeals and the Circuit Court.

Respectfully Submitted,



Robert L. Widener
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Bernie W. Ellis
BURR & FORMAN, LLP
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

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October 3, 2019

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THE STATE OF SOUTH CAROLINA
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RECEIVED

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J. Cordell Maddox, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 27917 (S.C. Sup. Ct. filed Sept. 18, 2019)
Supreme Court Case No. 2018-001309
S.C. Ct. App. Case No. 2015-001894
Opinion No. 5559 (S.C. Ct. App. filed May 16, 2018)
Lower Court Case 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.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr & Forman, LLP, certify that I served the Petition for Rehearing, by placing a true and correct copy in the U.S. Mail, sufficient postage pre-paid to Petitioner's counsel at the addresses shown below, on October 3, 2019:

Sarah P. Spruill, Esquire
Boyd B. Nicholson, Jr., Esquire
Haynsworth Sinkler Boyd, PA
Post Office Box 2048
Greenville, SC 29602

David W. Holmes, Esquire
Holmes Law Firm
712 North Main Street
Greenville, SC 29609


