CHAPTER 31

Electricity, Water, Natural Gas and Sewerage Systems

ARTICLE 1

General Provisions

**SECTION 5‑31‑10.** Laying water pipes under streams or highways.

 Any municipal corporation of this State having power to construct and operate a plant for water supply or any person contemplating the laying of pipes for supplying water to a municipal corporation or to a community of citizens may lay water pipes for the purpose of carrying water on or under the bed of any nontidal navigable stream of this State and, with the approval of the county authorities in any county, on or under any highway of such county. Such pipes shall be so laid as not to interfere with the free use of such highway or the navigation of such streams by boats to the same extent that they would be navigable if such pipes were not laid.

 Every such municipality or person, having laid such pipes, shall keep them in repair.

HISTORY: 1962 Code Section 59‑151; 1952 Code Section 59‑151; 1942 Code Section 7346; 1932 Code Section 7346; Civ. C. ‘22 Section 4479; Civ. C. ‘12 Section 3054; 1903 (24) 77.

CROSS REFERENCES

Constitutional provision for regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const, Art 9, Section 1.

Excavation by municipality in or across road in connection with municipally owned waterworks or sewerage system outside its limits, see Section 57‑7‑70.

Provision authorizing joint municipal water system to incur debt by issuing bonds, see Section 6‑25‑110.

LIBRARY REFERENCES

Waters and Water Courses 194.

Westlaw Key Number Search: 405k194.

C.J.S. Waters Sections 536 to 542, 588, 602, 606 to 611.

Attorney General’s Opinions

The City of Clemson most probably cannot acquire water lines of the East Clemson Water District within its corporate boundaries by adverse possession. There appears to be no authority allowing a municipality to require an adjacent or coexisting special purpose district providing the same services to upgrade its lines and equipment to meet the standards of the municipality. The City of Clemson may not extend new lines to customers presently being served inside the city limits by the Water District. In the absence of any general laws providing for otherwise, only a court could judicially resolve the recurring issues relative to a special purpose district’s operation within the corporate limits of a municipality. 1988 Op Atty Gen, No. 88‑21, p 70.

**SECTION 5‑31‑20.** Interference with sewers, waterworks and the like prohibited.

 No person shall turn, remove, raise or in any manner tamper with any cover of any manhole, filter, bed or other appurtenance of any public sewer without a written permit from the proper authorities of such works and no person except those engaged by the proper authorities shall enter any public sewer without a special written permit.

 And no person shall, either within or without any city or town, obstruct, damage or injure any pipe, ditch, drain, filter, beds or appurtenance of any waterworks, sewerage or drainage of any such city or town.

 Every person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, be subject to a fine not to exceed one hundred dollars or imprisonment for thirty days.

HISTORY: 1962 Code Section 59‑152; 1952 Code Section 59‑152; 1942 Code Section 1204; 1932 Code Section 1204; Cr. C. ‘22 Section 92; Cr. C. ‘12 Section 253; Cr. C. ‘02 Section 194; 1900 (23) 446.

CROSS REFERENCES

Interference with sewers and waterworks of political subdivisions, see Section 6‑11‑280.

Unauthorized use of municipal water system, see Sections 5‑31‑1110 et seq.

LIBRARY REFERENCES

Malicious Mischief 1.

Waters and Water Courses 212.

Westlaw Key Number Searches: 248k1; 405k212.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 2 to 5.

C.J.S. Waters Section 739.

**SECTION 5‑31‑30.** Investment of proceeds of sale of public utilities; sinking funds for outstanding bonds.

 Whenever any city or town in this State had prior to February 7 1927 issued bonds for the acquisition, by construction, purchase or otherwise, of any waterworks, lighting plant or other public utility and sells such utility prior to the maturity of such bonds, the governing body of such city or town may invest an amount of the proceeds of sale of such utility equal to the amount of outstanding bonds in duly secured notes of the purchaser of such utility or otherwise, as the governing body may determine. Upon any such investment being made, such governing body may, by resolution, set apart such investment as a sinking fund for the retirement of such outstanding bonds and when such investment is so made and set apart any other sinking funds on hand for the retirement of such bonds shall become freed of their character as sinking funds and may be lawfully diverted to any other legal municipal purpose; and no further annual tax levy for the repayment of such bonds shall be necessary.

HISTORY: 1962 Code Section 59‑153; 1952 Code Section 59‑153; 1942 Code Section 7279; 1932 Code Section 7279; 1927 (35) 42.

CROSS REFERENCES

Provision authorizing joint municipal water system to incur debt by issuing bonds, see Section 6‑25‑110.

LIBRARY REFERENCES

Municipal Corporations 951.

Westlaw Key Number Search: 268k951.

C.J.S. Municipal Corporations Sections 1704 to 1705.

**SECTION 5‑31‑40.** Powers under certain sections cumulative.

 The powers conferred by Sections 5‑31‑210 to 5‑31‑270, 5‑31‑430, 5‑31‑610 to 5‑31‑640, and 5‑31‑660 upon the cities and towns of the State are, and shall be taken, deemed and construed to be, in addition to the powers now enjoyed by such cities and towns.

HISTORY: 1962 Code Section 59‑158; 1952 Code Section 59‑158; 1942 Code Section 7294; 1932 Code Section 7294; Civ. C. ‘22 Section 4443; Civ. C. ‘12 Section 3020; Civ. C. ‘02 Section 2013; 1897 (22) 507.

**SECTION 5‑31‑50.** Exclusive municipal franchises for furnishing water or waste disposal service.

 All cities and towns of this State may grant to persons the exclusive franchise of furnishing water or waste disposal service to such cities and towns and the inhabitants thereof for a period not exceeding forty years. No such franchise shall be valid unless it shall first receive the vote of two thirds of the governing body of the city or town granting it and be subsequently confirmed by a vote of a majority of the qualified electors of such city or town, voting at an election to be called specially for the purpose. Any ordinance or resolution granting such a franchise shall prescribe a method for determining rates for furnishing water, both for public and private consumption, and for waste disposal service, and make provision for periodic renewal of such franchises. No such franchise shall exceed a period of forty years from the initial delivery of water or the commencement of waste disposal services or affect any existing contractual rights.

HISTORY: 1962 Code Section 58‑151; 1952 Code Section 58‑151; 1942 Code Section 7269; 1932 Code Section 7269; Civ. C. ‘22 Section 4424; Civ. C. ‘12 Section 3014; 1902 (23) 1039; 1968 (55) 2593.

CROSS REFERENCES

Exclusive municipal franchises to furnish electricity, see Section 58‑27‑410.

LIBRARY REFERENCES

Municipal Corporations 607.

Waters and Water Courses 189.

Westlaw Key Number Searches: 268k607; 405k189.

C.J.S. Waters Sections 483, 582 to 588.

NOTES OF DECISIONS

In general 1

1. In general

The grantee of a franchise is not liable to individuals damaged by failure to furnish water when such liability is not contemplated by the contract. Ancrum v Camden Water, etc., Co., 82 SC 284, 64 SE 151 (1909). Cooke v Paris Mt. Water Co., 82 SC 235, 64 SE 157 (1909).

ARTICLE 3

Commissioner of Public Works

**SECTION 5‑31‑210.** Election and terms of commissioners of public works in municipalities.

 At any election for bonds held to meet the costs of acquiring property of the character referred to in Section 5‑31‑610 the elector shall vote for three citizens of the city or town whose terms of office shall be respectively two, four and six years and until the general election for municipal officers next following the expiration of the short term, and until their successors are elected and qualified. The classification above designated as to the term shall be ascertained by the commissioners after election by lot. At each general election for municipal officers following the expiration of the term of the commissioner holding the short term and at every such election every two years thereafter, one such commissioner shall be elected for a term of six years and until his successor is elected and qualified. The officers so elected and their successors in office shall be known as the commissioners of public works of such municipality and by that name may sue and be sued in any of the courts of this State.

 In addition to the three members of the board of commissioners of public works of a municipality authorized above, the governing body of a municipality with a population of fifty thousand persons or less according to the 1980 official United States Census may provide by ordinance for the election of two additional commissioners. The new commissioners must be elected at a special election or at any general election following the enactment of the ordinance in the same manner that the other commissioners are elected. The new member receiving the highest number of votes in that election shall serve for a term of six years and the new member receiving the next highest number of votes in that election shall serve for a term of four years. Their successors must be elected in the election for municipal officers every four or six years thereafter for terms of office of six years. The members elected shall serve until their successors are elected and qualify. Vacancies in these two new positions must be filled in the same manner as other vacancies on the board of commissioners of public works are filled. The provisions of this paragraph for two additional commissioners apply only to boards of commissioners of public works founded after 1920.

HISTORY: 1962 Code Section 59‑171; 1952 Code Section 59‑171; 1942 Code Section 7281; 1932 Code Section 7281; Civ. C. ‘22 Section 4431; Civ. C. ‘12 Section 3016; Civ. C. ‘02 Section 2009; 1896 (22) 83; 1899 (23) 50; 1900 (23) 383; 1904 (24) 403; 1907 (25) 625; 1913 (28) 48; 1915 (29) 61; 1916 (29) 826, 946; 1917 (30) 60; 1918 (30) 715, 770; 1920 (31) 716, 986; 1921 (32) 39, 196, 248; 1922 (32) 781, 789, 794, 834, 986; 1923 (33) 158, 162; 1924 (33) 1062; 1925 (34) 7, 246, 265; 1926 (34) 918, 977; 1927 (35) 119, 171, 210; 1928 (35) 113; 1929 (36) 40, 45, 49; 1930 (36) 1248, 1403; 1931 (37) 126; 1932 (37) 1408; 1933 (38) 466; 1934 (38) 1473; 1936 (39) 1480; 1940 (41) 1815; 1980 Act No. 476; 1989 Act No. 117, Section 1.

CROSS REFERENCES

Provision that joint municipal water system be managed and controlled by commission, see Section 6‑25‑60.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

Attorney General’s Opinions

Presuming all other Freedom of Information Act requirements are satisfied, the Bamberg Board of Public Works may hold its meetings via telephone conference call. S.C. Op.Atty.Gen. (August 28, 2012) 2012 WL 3875118.

Because 2010 Act No. 301 expressly retains the election procedures set forth in Section 5‑31‑210 and retains the same non‑mandatory language, it appears the Act simply gives discretion to the governing body of the City of Bamberg as to whether that body will provide for the election of two additional commissioners. S.C. Op.Atty.Gen. (Nov. 17, 2011) 2011 WL 6120337.

Although a municipality may extend its services to persons outside its corporate limits, there is no provision permitting those persons within the extra‑territorial service area to participate in the election of commissioners of public works. 1986 Op Atty Gen, No. 86‑83, p 258.

The Mayor and aldermen of the City of Charleston who serve as members of the Charleston Commission of Public Works have the power to vote along with the other commissioners when making Commission decisions. 1976‑77 Op Atty Gen, No 77‑239, p 178.

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

A city cannot provide a salary to the Commissioners of Public Works. 1975‑76 Op Atty Gen, No 4335, p 159.

Board of public works is separate from governing body of municipality. The governing body of a municipality and the board of commissioners of public works of the municipality are separate and distinct bodies. 1965‑66 Op Atty Gen, No 2033, p 109.

Simultaneously serving on State Board of Examiners in Optometry and as commissioner for Combined Utility System of Easley would be violative of dual office holding prohibitions of state constitution. 1993 Op Atty Gen No. 93‑24.

Increase of commissioners of public works constitutional. An act increasing membership of Laurens Public Works Commission from three to five members would be constitutional as such act would constitute special provisions for city of Laurens in this section [Code 1962 Section 59‑171] as authorized by Art 3, Section 34, subdiv 10, of Constitution and would have protection of Art 7, Section 11 of Constitution. Atty Gen Op. May 3, 1963.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Harby v Jennings, 112 SC 479, 101 SE 649 (1919). Black v Fishburne, 84 SC 451, 66 SE 681 (1910). Ross v Lipscomb, 83 SC 136, 65 SE 451 (1909). Seegers v Gibbes, 72 SC 532, 52 SE 586 (1905). Spartanburg v Blalock, 223 SC 252, 75 SE2d 361 (1953).

Applied in Green v. City of Rock Hill (S.C. 1929) 149 S.C. 234, 147 S.E. 346.

**SECTION 5‑31‑215.** Ex officio commissioners of public works in certain cities.

 In a city with a population of more than thirty thousand persons and fewer than fifty thousand persons, according to the most recent official United States Census, in addition to the commissioners of public works to be elected as provided in Section 5‑31‑210, the mayor and the chairman of the committee on water supply, if there be such a committee, shall be ex officio commissioners of public works, if requested by a resolution approved by seventy‑five percent or more of the commissioners of public works and authorized by an ordinance approved by seventy‑five percent or more of the members of the municipal council of the municipality. The board of commissioners of public works in any such city shall fill any vacancy occurring in the commission by appointment for the unexpired term, appointment to be made by the remaining commissioners, except in the case of an ex officio member of the commission.

HISTORY: 1995 Act No. 66, Section 1.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

**SECTION 5‑31‑220.** Special provisions for cities over 50,000.

 In cities of fifty thousand inhabitants or more, in addition to the three commissioners of public works to be elected as provided in Section 5‑31‑210, the mayor and the chairman of the committee on water supply, if there be such a committee, shall be ex officio commissioners of public works. In such cities such commissioners of public works shall serve without compensation. The board of commissioners of public works in any such city shall fill any vacancy occurring in the commission by appointment for the unexpired term, appointment to be made by the remaining commissioners, except in the case of an ex officio member of the commission.

HISTORY: 1962 Code Section 59‑172; 1952 Code Section 59‑172; 1942 Code Section 7281; 1932 Code Section 7281; Civ. C. ‘22 Section 4431; Civ. C. ‘12 Section 3016; Civ. C. ‘02 Section 2009; 1896 (22) 83; 1899 (23) 50; 1900 (23) 383; 1904 (24) 403; 1907 (25) 625; 1913 (28) 48; 1915 (29) 61; 1916 (29) 826, 946; 1917 (30) 60; 1918 (30) 715, 770; 1920 (31) 716, 986; 1921 (32) 39, 196, 248; 1922 (32) 781, 789, 794, 834, 986; 1923 (33) 158, 162; 1924 (33) 1062; 1925 (34) 7, 246, 265; 1926 (34) 918, 977; 1927 (35) 119, 171, 210; 1928 (35) 1143; 1929 (36) 40, 45, 49; 1930 (36) 1248, 1403; 1931 (37) 126, 196, 302; 1932 (37) 1408; 1933 (38) 466; 1934 (38) 1473; 1936 (39) 1480; 1940 (41) 1815.

CROSS REFERENCES

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

Attorney General’s Opinions

The Mayor and aldermen of the City of Charleston who serve as members of the Charleston Commission of Public Works have the power to vote along with the other commissioners when making Commission decisions. 1976‑77 Op Atty Gen, No 77‑234, p 178.

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

**SECTION 5‑31‑230.** Municipalities in which there are no board of commissioners of public works.

 The following cities and towns shall have no board of commissioners of public works: Abbeville, Allendale, Barnwell, Beaufort, Belton, Bennettsville, Blackville, Bluffton, Bowman, Branchville, Camden, Central, Chapin, Cheraw, Cherry Grove Beach, Chesnee, Chester, Clemson, Clinton, Clio, Clover, Conway, Cowpens, Crescent Beach, Denmark, Dillon, Donalds, Due West, Duncan, Edgefield, Elgin, Estill, Fairfax, Forest Acres, Fort Mill, Fountain Inn, Georgetown, Goose Creek, Govan, Great Falls, Hampton, Hardeeville, Heath Springs, Hemingway, Hilda, Honea Path, Irmo, Iva, Jamestown, Johnston, Kingstree, Lake City, Lamar, Lancaster, Landrum, Lane, Latta, Lexington, Liberty, Little Mountain, Lodge, Loris, Lyman, Marion, McCall, Moneta, Mullins, Myrtle Beach, Newberry, North Augusta, Norway, Ocean Drive Beach, Orangeburg, Pelion, Pelzer, Pickens, Prosperity, Quinby, Ridgeland, Ridge Spring, Ridgeville, Rock Hill, St. George, St. Stephen, Salem, Salley, Scranton, Sharon, Simpsonville, Smoaks, Society Hill, Springfield, Sumter, Swansea, Tega Cay, Timmonsville, Trenton, Union, Varnville, Walhalla, Walterboro, Ware Shoals, West Columbia, West Greenville, West Union, Westminster, Williams, Windy Hill Beach, Winnsboro, and York. In these cities and towns, the duties, powers, and responsibilities vested in a board of commissioners of public works must be vested in the respective city or town council, except that:

 (a) in the cities of Marion and Newberry and in the town of Landrum, they must be vested in the mayor and aldermen;

 (b) in the cities and towns of Beaufort, Bennettsville, Blackville, Branchville, Chesnee, Clio, Clover, Dillon, Due West, Hampton, Johnston, Kingstree, Lancaster, Myrtle Beach, North Augusta, Prosperity, Rock Hill, Salley, Union, Walhalla, West Columbia, West Union, and York, they must be vested in the mayor and city or town council or in the intendant and wardens, as applicable;

 (c) in the town of Winnsboro, they must be vested in the mayor and commissioners;

 (d) in the city of Forest Acres, they are devolved upon a director of public works until June 30, 1975, and after that time are devolved upon the city council; and

 (e) in the city of Westminster, they are devolved upon the city council on July 1, 2005.

HISTORY: 1962 Code Section 59‑174; 1952 Code Section 59‑174; 1942 Code Sections 7281, 7675‑6, 7675‑22, 7675‑27, 7675‑38, 7675‑39; 1932 Code Section 7281; Civ. C. ‘22 Section 4431; Civ. C. ‘12 Section 3016; Civ. C. ‘02 Section 2009; 1896 (22) 83; 1899 (23) 50; 1900 (23) 383; 1904 (24) 403; 1907 (25) 625; 1913 (28) 48; 1915 (29) 61; 1916 (29) 826, 946; 1917 (30) 60; 1918 (30) 715, 717; 1920 (31) 716, 786; 1921 (32) 39, 196, 248; 1922 (32) 781, 789, 794, 834, 896; 1923 (33) 158, 162; 1924 (33) 1062; 1925 (34) 7, 246, 265; 1926 (34) 918, 977; 1927 (35) 119, 171, 210; 1928 (35) 1143; 1929 (36) 40, 45, 49; 1930 (36) 1248, 1403; 1931 (37) 126, 196, 302; 1932 (37) 1350, 1408; 1933 (38) 466, 515; 1934 (38) 1473; 1936 (39) 1368, 1480; 1940 (41) 1815; 1942 (42) 1446, 1482; 1946 (44) 1347, 1355, 1403; 1947 (45) 296, 520, 533; 1948 (45) 1661, 2017; 1949 (46) 149; 1950 (46) 1923, 1928, 1952, 2011, 2029, 2152, 2233, 2321; 1951 (47) 364; 1952 (47) 2076; 1953 (48) 33, 39, 182, 256; 1954 (48) 1529, 1846; 1955 (49) 15, 132; 1956 (49) 1591, 1800, 1985; 1957 (50) 5, 7; 1958 (50) 1901; 1959 (51) 47, 144; 1960 (51) 1547; 1962 (52) 2238; 1963 (53) 18, 283, 603; 1964 (53) 1789, 1790, 1827, 2170, 2363; 1965 (54) 36, 325; 1966 (54) 2005, 2032; 1967 (55) 23, 327, 571, 914; 1968 (55) 2269, 2276, 2381, 2406; 1969 (56) 11, 19, 32, 60, 321; 1970 (56) 1897, 2002, 2551, 2647, 2650; 1971 (57) 21, 167, 1089; 1972 (57) 2309, 2403, 3115; 1973 (58) 187; 2005 Act No. 22, Section 1, eff March 22, 2005; 2012 Act No. 145, Section 1, eff April 2, 2012.

Effect of Amendment

The 2005 amendment reworded this section to divide it into two sentences and in the first sentence, added “Westminster” and in the second sentence redesignated items (d) and (e) as items (c) and (d) and added item (e) relating to the city of Westminster.

The 2012 amendment added “Tega Cay”; and substituted “after that time” for “thereafter” in subsection (d).

CROSS REFERENCES

Provision that joint municipal water system be managed and controlled by commission, see Section 6‑25‑60.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

Attorney General’s Opinions

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

City of Allendale may fix water rates by resolution. The city of Allendale may fix water rates and charges by resolution and it would not be necessary to enact a formal ordinance. 1965‑66 Op Atty Gen, No 2090, p 189.

NOTES OF DECISIONS

In general 1

1. In general

Cited in City of Spartanburg v. Blalock (S.C. 1953) 223 S.C. 252, 75 S.E.2d 361.

**SECTION 5‑31‑235.** Abolition of commissions of public works.

 (A) If the commissioners of public works unanimously, by resolution, petition the municipal council to abolish the commission, the municipal council may, after a public hearing, adopt an ordinance abolishing the commission of public works.

 (B) The municipal council of any municipality shall, upon receiving a petition signed by thirty percent of the registered voters of the qualified voters of the municipality, call for a binding referendum to determine whether or not the Commission of Public Works must be abolished. The referendum must be held in accordance with the general election laws of this State. The question on the ballot must be as follows: “Shall the Commission of Public Works of the municipality of (name of the appropriate municipality) be abolished?”

Yes []

No []

 (C) If a majority of the voters who vote in that referendum determines that the Commission of Public Works be abolished, then the municipal council shall adopt an ordinance abolishing the Commission of Public Works and the municipality shall assume all the rights, duties, responsibilities, assets, and liabilities of the former Commission of Public Works. The Commission of Public Works shall cease to exist as of the date of the final passage of the ordinance abolishing it, and the municipality shall assume the rights, duties, responsibilities, assets, and liabilities of the former Commission of Public Works at the same instant. The referendum provided for in subsection (B), whether successful or unsuccessful, may not be conducted more often than every thirty‑six months.

 (D) As an alternative to the procedure provided in subsections (B) and (C), a commission of public works may be abolished by an affirmative vote of a majority of the members of the commission transferring the rights, duties, responsibilities, assets, and liabilities of the former commission to a municipality. The transfer is effective when the municipality adopts an ordinance accepting the transfer.

 (E) The provisions of subsections (B), (C), and (D) of this section apply only to a municipality which has been created as a result of the consolidation of two or more municipalities.

HISTORY: 1984 Act No. 376; 1993 Act No. 145, Section 1.

CROSS REFERENCES

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

**SECTION 5‑31‑240.** Qualification; organization; officers; vacancies.

 The mayor of the city or the mayor or intendant of the town shall notify the persons so elected as members of the commissioners of public works of their election, within ten days after the results of such election are declared. The persons elected or appointed to such office shall qualify by taking the same oath as the elected officers of the municipality take. At the first meeting of the commissioners after the election, and after any election for a full term, they shall organize by the election of one of their number as chairman. The clerk or recorder of the municipality shall act as secretary of the commissioners. The mayor and aldermen or council of the city or the mayor or intendant and the council or wardens of a town shall fill any vacancy occurring in the commission by appointment for the unexpired term.

HISTORY: 1962 Code Section 59‑175; 1952 Code Section 59‑175; 1942 Code Section 7281; 1932 Code Section 7281; Civ. C. ‘22 Section 4431; Civ. C. ‘12 Section 3016; Civ. C. ‘02 Section 2009; 1896 (22) 83; 1899 (23) 50; 1900 (23) 383; 1904 (24) 403; 1907 (25) 625; 1913 (28) 48; 1915 (29) 61; 1916 (29) 826, 946; 1917 (30) 60; 1918 (30) 715, 770; 1920 (31) 716, 986; 1921 (32) 39, 196, 248; 1922 (32) 781, 789, 794, 834, 986; 1923 (33) 158, 162; 1924 (33) 1062; 1925 (34) 7, 246, 265; 1926 (34) 918, 977; 1927 (35) 119, 171, 210; 1928 (35) 1143; 1929 (36) 40, 45, 49; 1930 (36) 1248, 1403; 1931 (37) 126, 196, 302; 1932 (37) 1408; 1933 (38) 466; 1934 (38) 1473; 1936 (39) 1480; 1940 (41) 1815.

CROSS REFERENCES

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 178.

Westlaw Key Number Search: 268k178.

Attorney General’s Opinions

There appears to be no authority to appoint temporary replacement for municipal official during official’s suspension from office pending disposition of indictments for crimes involving moral turpitude; vacancy would not exist in office unless or until official is convicted; after conviction, vacancy would be filled according to terms of Section 5‑31‑240. 1985 Op Atty Gen, No. 85‑133, p 369.

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

Simultaneously serving on State Board of Examiners in Optometry and as commissioner for Combined Utility System of Easley would be violative of dual office holding prohibitions of state constitution. 1993 Op Atty Gen No. 93‑24.

**SECTION 5‑31‑250.** Powers.

 The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

HISTORY: 1962 Code Section 59‑179; 1952 Code Section 59‑179; 1942 Code Section 7283; 1932 Code Section 7283; Civ. C. ‘22 Section 4432; Civ. C. ‘12 Section 3017; Civ. C. ‘02 Section 2010; 1896 (22) 85; 1901 (23) 725; 1915 (29) 53; 1924 (33) 1161; 1929 (36) 84; 1932 (37) 1409; 1933 (38) 277; 1955 (49) 311; 1957 (50) 218; 1960 (51) 1987.

CROSS REFERENCES

Action by city council if majority of electors favor acquisition or disposal of municipal utility, see Section 5‑31‑660.

Construction and operation of municipal utilities generally, see Section 5‑31‑610.

Election prerequisite to acquisition or disposal of municipal utility, see Sections 5‑31‑620 et seq.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Electricity 11.2(3).

Municipal Corporations 328.

Waters and Water Courses 203(6).

Westlaw Key Number Searches: 145k11.2(3); 268k328; 405k203(6).

C.J.S. Municipal Corporations Sections 1027 to 1029.

C.J.S. Waters Sections 681, 684 to 686.

Attorney General’s Opinions

Discussion of whether the Bamberg Board of Public Works may purchase, own and operate a golf course or a country club which would include a golf course, pool, and meeting facilities. S.C. Op.Atty.Gen. (October 13, 2015) 2015 WL 6520641.

Discussion of whether the Gaffney Board of Public Works has the authority to make a donation to a private religion‑based educational institution. S.C. Op.Atty.Gen. (March 12, 2014) 2014 WL 1398594.

Simultaneously serving on State Board of Examiners in Optometry and as commissioner for Combined Utility System of Easley would be violative of dual office holding prohibitions of state constitution. 1993 Op Atty Gen No. 93‑24.

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

City of Allendale may fix water rates by resolution. The city of Allendale may fix water rates and charges by resolution and it would not be necessary to enact a formal ordinance. 1965‑66 Op Atty Gen, No 2090, p 189.

Public Service Commission has no authority to regulate rates of municipally owned public utilities. Atty Gen Op. Feb. 25, 1963.

NOTES OF DECISIONS

In general 1

Disposition of waterworks 3

Operation and management of waterworks 2

1. In general

Applied in Waits v Ninety‑Six, 154 SC 350, 151 SE 576 (1930); Irvine v Greenwood, 89 SC 511, 72 SE 228 (1911).

So long as commissioners fulfill covenants and obligations of revenue bonds. If the commissioners fail or neglect to fulfill the covenants and agreements for the protection of the bondholders set forth in the ordinance authorizing the issuance of revenue bonds, the city council may enforce compliance. City of Spartanburg v. Blalock (S.C. 1953) 223 S.C. 252, 75 S.E.2d 361.

The commission under this section [Code 1962 Section 59‑179] is but an agency of the city or town, having no greater authority than its principal. Simons v. City Council of Charleston (S.C. 1936) 181 S.C. 353, 187 S.E. 545.

Cited in Johnson v. Roddey (S.C. 1909) 83 S.C. 462, 65 S.E. 626.

2. Operation and management of waterworks

This section [Code 1962 Section 59‑179] conferred upon the commissioners of public works all powers necessarily incident to the operation and management of the waterworks, and the city council was not vested with any authority or power in the management thereof. Town of Myrtle Beach v. Suber (S.C. 1954) 225 S.C. 201, 81 S.E.2d 352.

The full control and management of the waterworks system, including the power to fix rates and to generally determine the fiscal policies to be followed, is vested in the board of commissioners. City of Spartanburg v. Blalock (S.C. 1953) 223 S.C. 252, 75 S.E.2d 361.

The power to fix the rates and otherwise handle the fiscal affairs of the waterworks system given to commissioners of public works under this section [Code 1962 Section 59‑179] was not taken away from them by the Revenue Bond Act for Utilities, Code 1962 Sections 59‑361 to 59‑415, and vested in the city council of a municipality issuing revenue bonds under that act. City of Spartanburg v. Blalock (S.C. 1953) 223 S.C. 252, 75 S.E.2d 361.

3. Disposition of waterworks

Under this section [Code 1962 Section 59‑179] and Code 1962 Section 59‑241, the city of Rock Hill, through electorate and city council, has plenary discretionary power to make such disposal of waterworks plant as it may see fit, subject to control of courts, under well‑settled legal principals. Green v. City of Rock Hill (S.C. 1929) 149 S.C. 234, 147 S.E. 346. Municipal Corporations 225(3)

**SECTION 5‑31‑260.** Incurring indebtedness.

 No board of commissioners of public works may incur any indebtedness without the concurrence of the city or town council.

HISTORY: 1962 Code Section 59‑181; 1952 Code Section 59‑181; 1942 Code Section 7283; 1932 Code Section 7283; Civ. C. ‘22 Section 4432; Civ. C. ‘12 Section 3017; Civ. C. ‘02 Section 2010; 1896 (22) 85; 1901 (23) 725; 1915 (29) 53; 1924 (33) 1161; 1929 (36) 84; 1932 (37) 1409; 1933 (38) 277.

CROSS REFERENCES

Action by city council if majority of electors favor acquisition or disposal of municipal utility, see Section 5‑31‑660.

Construction and operation of municipal utilities generally, see Section 5‑31‑610.

Election prerequisite to acquisition or disposal of municipal utility, see Sections 5‑31‑620 et seq.

Exceptions to debt limitation for certain cities for certain public works, see Section 5‑21‑20.

Provision authorizing joint municipal water system to incur debt by issuing bonds, see Section 6‑25‑110.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Municipal Corporations 858.

Westlaw Key Number Search: 268k858.

C.J.S. Municipal Corporations Sections 1571 to 1572.

Attorney General’s Opinions

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

**SECTION 5‑31‑270.** Monthly financial report.

 Each board of commissioners of public works shall make a full statement to the city or town council at the end of each month of its receipts and disbursements of all kinds during the preceding month.

HISTORY: 1962 Code Section 59‑185; 1952 Code Section 59‑185; 1942 Code Section 7283; 1932 Code Section 7283; Civ. C. ‘22 Section 4432; Civ. C. ‘12 Section 3017; Civ. C. ‘02 Section 2010; 1896 (22) 85; 1901 (23) 725; 1915 (29) 53; 1924 (33) 1161; 1929 (36) 84; 1932 (37) 1409; 1933 (38) 277.

CROSS REFERENCES

Action by city council if majority of electors favor acquisition or disposal of municipal utility, see Section 5‑31‑660.

Construction and operation of municipal utilities generally, see Section 5‑31‑610.

Election prerequisite to acquisition or disposal of municipal utility, see Sections 5‑31‑620 et seq.

Provision requiring annual audit and reports of joint municipal water system, see Section 6‑25‑140.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

Attorney General’s Opinions

State‑wide or general legislation would be necessary to abolish the Town of Manning Water Commission and to vest its powers and authority in the Town of Manning. 1976‑77 Op Atty Gen, No 77‑129, p 109.

ARTICLE 5

Acquisition and Condemnation of Lands

**SECTION 5‑31‑410.** Purchase of lands for public works within corporate limits.

 Any municipal corporation desiring to become the owner of any land, situate within the corporate limits of such municipal corporation, in this State, for the erection of a public building for the use of the corporation or the purpose of procuring a supply of water or establishing a sewerage system or other public works for the use of the corporation, may purchase such land from the owner thereof and pay for it in such manner as such municipal corporation may determine.

HISTORY: 1962 Code Section 59‑201; 1952 Code Section 59‑201; 1942 Code Section 7307; 1932 Code Section 7307; Civ. C. ‘22 Section 4455; Civ. C. ‘12 Section 3032; 1907 (25) 640.

CROSS REFERENCES

Constitutional provision for acquisition and operation of public utilities systems, see SC Const, Art 8, Section 16.

Ownership of property, generally, see Section 5‑7‑40.

LIBRARY REFERENCES

Municipal Corporations 223.

Westlaw Key Number Search: 268k223.

C.J.S. Municipal Corporations Section 881.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Carter v Greenville, 175 SC 130, 178 SE 508 (1935); Spartanburg v Cudd, 132 SC 264, 128 SE 360 (1925).

Constitutional remedy afforded. This article provides a method for ascertaining the amount of compensation but does not provide a method for determining the right to compensation when the right thereto is denied. There remains to owner of land the remedy afforded by SC Const, Art 1, Section 17. It follows that the method provided by statute is not exclusive, there being the constitutional remedy available. Godwin v. Carrigan (S.C. 1955) 227 S.C. 216, 87 S.E.2d 471.

Section must be construed with other condemnation provisions. Greenwood County v. Watkins (S.C. 1940) 196 S.C. 51, 12 S.E.2d 545.

**SECTION 5‑31‑420.** Condemnation upon refusal to sell land desired.

 In case the owner of a any land situate within the corporate limits and desired by a municipal corporation for any of the purposes referred to in Section 5‑31‑410 or (b) any land desired by the corporation for enlarging, extending, or establishing a sewerage system or a water system within or without the corporate limits shall refuse to sell it, the municipal corporation may condemn the land in the manner provided in the Eminent Domain Procedure Act (Chapter 2 of Title 28).

HISTORY: 1962 Code Section 59‑202; 1952 Code Section 59‑202; 1942 Code Section 7308; 1932 Code Section 7308; Civ. C. ‘22 Section 4456; Civ. C. ‘12 Section 3033; 1907 (25) 640; 1951 (47) 732; 1953 (48) 272; 1987 Act No. 173, Section 8.

CROSS REFERENCES

Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

Extension of powers of condemnation to corporations supplying water or sewerage services, see Section 58‑7‑30.

Power of condemnation, see Section 5‑7‑50.

Taking of private property, see SC Const, Art 1, Section 13.

LIBRARY REFERENCES

Eminent Domain 28, 32.

Westlaw Key Number Searches: 148k28; 148k32.

C.J.S. Eminent Domain Sections 38 to 39, 44 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

S.C. Jur. Eminent Domain Section 18, Corporations.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Greenwood County v. Watkins (S.C. 1940) 196 S.C. 51, 12 S.E.2d 545.

**SECTION 5‑31‑430.** Powers of municipalities with respect to acquisition of property and operation of water and electric works.

 Cities and towns may purchase and hold suitable lands and water and erect aqueducts, dams, canals, buildings, machine shops, and other works and construct and lay conduits, mains, and pipes as may be necessary to obtain and secure a supply of water and power for operating the waterworks and electric light works. They may erect poles and wires along any of the adjacent highways and in the cities and towns and may condemn (a) any property and lands, the drainage from which would contaminate the water supply of the city or town, (b) streams, lakes, or lands as may be required for the water supply of the city or town, or (c) rights‑of‑way to enable them to lay mains and pipes for water, sewerage, or drainage, and erect and operate the aqueducts, dams, canals and water and electrical works and electric lines after paying to the owner just compensation for the property or rights‑of‑way to be condemned, as determined in the manner provided by the Eminent Domain Procedure Act (Chapter 2 of Title 28).

HISTORY: 1962 Code Section 59‑221; 1952 Code Section 59‑221; 1942 Code Section 7293; 1932 Code Section 7293; Civ. C. ‘22 Section 4442; Civ. C. ‘12 Section 3019; Civ. C. ‘02 Section 2012; 1896 (22) 83; 1953 (48) 272; 1987 Act No. 173, Section 9.

CROSS REFERENCES

Condemnation Procedure Act, see Sections 28‑2‑10 et seq.

Dam and Reservoirs Safety Act, see Sections 49‑11‑110 et seq.

Eminent domain, generally, see Title 28, Sections 28‑2‑10 et seq.

Extension of powers of condemnation to corporations supplying water or sewerage services, see Section 58‑7‑30.

Ownership of property generally, see Section 5‑7‑40.

Power of condemnation, see Section 5‑7‑50.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

Taking of private property, see SC Const, Art 1, Section 13.

LIBRARY REFERENCES

Eminent Domain 28.

Waters and Water Courses 183.

Westlaw Key Number Searches: 148k28; 405k183.

C.J.S. Eminent Domain Sections 38 to 39.

C.J.S. Waters Section 483.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

NOTES OF DECISIONS

In general 1

1. In general

Cited in City of Spartanburg v. Blalock (S.C. 1953) 223 S.C. 252, 75 S.E.2d 361.

This section [Code 1962 Section 59‑221] does not provide any method for determining the right to institute such proceedings, but once instituted the only matter to be determined is the amount of compensation. Town of Greenwood v. Yoe (S.C. 1911) 89 S.C. 24, 71 S.E. 238.

Remedy is exclusive for damage to property outside city. A private person whose property outside of city limits is damaged by reason of emptying sewerage pipes into stream, thereby contaminating waters, may have compensation awarded him and the remedy of this section [Code 1962 Section 59‑221] is exclusive of a common‑law action. Matheny v. City of Aiken (S.C. 1904) 68 S.C. 163, 47 S.E. 56.

**SECTION 5‑31‑440.** Condemnation of land for waterworks and to protect watersheds.

 Any municipal corporation in this State desiring to establish waterworks or to enlarge or extend such works, whether it owns or operates the plant or not, may condemn lands, water rights, and water privileges or any other property, including existing waterworks or pipelines, or any part of them, necessary for the purpose of establishing, maintaining, extending, or operating a waterworks plant for supplying water to the municipal corporation and to its citizens. Proper compensation must be first made to the owners. The condemnation must be made in the manner provided in the Eminent Domain Procedure Act (Chapter 2 of Title 28). No municipality shall condemn any waterworks during the life of any franchise, nor when by contract there is any other method of valuation for the purpose of acquisition by the municipality upon the expiration of the franchise, except that the condemnation actions may be had during the last year of the term of the franchise to take effect by the transfer of title and possession immediately upon the expiration of such franchise. A municipal corporation may also enter upon and condemn lands and tenements for the purpose of protecting the watersheds from contamination, nuisances, or any condition which may be a menace to the public health, upon proper compensation being first made to the owner.

HISTORY: 1962 Code Section 59‑222; 1952 Code Section 59‑222; 1942 Code Section 7302; 1932 Code Section 7302; Civ. C. ‘22 Section 4450; Civ. C. ‘12 Section 3027; 1905 (24) 867; 1914 (28) 499; 1916 (29) 941; 1953 (48) 272; 1987 Act No. 173, Section 10.

CROSS REFERENCES

Eminent domain, generally, see Sections 28‑2‑10 et seq.

Extension of powers of condemnation to corporations supplying water or sewerage services, see Section 58‑7‑30.

Power of condemnation, see Section 5‑7‑50.

Taking of private property, see SC Const, Art 1, Section 13.

LIBRARY REFERENCES

Eminent Domain 28.

Westlaw Key Number Search: 148k28.

C.J.S. Eminent Domain Sections 38 to 39.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

S.C. Jur. Eminent Domain Section 18, Corporations.

NOTES OF DECISIONS

In general 1

1. In general

Cited in University of South Carolina v. Mehlman (S.C. 1964) 245 S.C. 180, 139 S.E.2d 771.

Constitutionality. As to the constitutionality of this section [Code 1962 Section 59‑222] when construed with a section of the Code of 1912, since repealed, see Paris Mountain Water Co. v. City of Greenville (S.C. 1918) 110 S.C. 36, 96 S.E. 545.

**SECTION 5‑31‑450.** Drains for surface water.

 Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

HISTORY: 1962 Code Section 59‑224; 1952 Code Section 59‑224; 1942 Code Section 7301; 1932 Code Section 7301; Civ. C. ‘22 Section 4449; Civ. C. ‘12 Section 3026; 1902 (23) 1038; 1953 (48) 272.

LIBRARY REFERENCES

Eminent Domain 31.

Municipal Corporations 829, 835.

Westlaw Key Number Searches: 148k31; 268k829; 268k835.

C.J.S. Eminent Domain Section 44.

C.J.S. Municipal Corporations Sections 780, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 27, Demand.

S.C. Jur. Adjoining Landowners Section 6, Actions Brought Pursuant to Statute.

S.C. Jur. Adjoining Landowners Section 10, Water Accumulation‑Publicly Owned Adjoining Land.

S.C. Jur. Eminent Domain Section 16, Municipalities.

NOTES OF DECISIONS

In general 1

Condemnation 4

Demand 2

Liability 3

1. In general

Cited in Faust v Richland County, 117 SC 251, 109 SE 151 (1921). Triplett v Columbia, 111 SC 7, 96 SE 675 (1918).

Appellant’s contention that a municipality had exclusive liability in an inverse condemnation case would not be considered on appeal, where he did not raise such defense in his pleadings, but, rather, chose to answer the complaint on its merits. Watson v. Town of Pendleton (S.C. 1986) 289 S.C. 315, 345 S.E.2d 489.

The foundation of recovery under this section [Code 1962 Section 59‑224] is damage resulting from overt acts of the municipality, which it has failed to remedy after notice. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Proof of negligence. Under this section [Code 1962 Section 59‑224] proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare, is not an essential ingredient of the cause of action in favor of an adjacent landowner, whose property has been damaged by surface water cast upon it as the result of such construction. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Quoted in Belue v. City of Greenville (S.C. 1954) 226 S.C. 192, 84 S.E.2d 631.

Applied in Holliday v. City of Greenville (S.C. 1953) 224 S.C. 207, 78 S.E.2d 279.

2. Demand

The purpose of a demand is to notify the municipality, through its appropriate agency, of the damage done or threatened by surface water from its streets as the result of the construction of its street improvements, and of the need for more adequate drainage. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It need not be in writing—This section [Code 1962 Section 59‑224] does not require that a demand be in writing, and does not specify the agency of the municipality to which it should be addressed. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

Sufficiency of demand is jury issue. Whether the action of affected property owners at a meeting with the city’s board of health was sufficient demand upon the city for relief was, under the testimony, an issue for determination by the jury. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

3. Liability

This section [Code 1962 Section 59‑224] plainly contemplates positive action by a municipality to render it liable for damages. Hill v Greenville, 223 SC 392, 76 SE2d 294 (1953). Brown v School Dist., 251 SC 220, 161 SE2d 815 (1968).

For additional related cases, as to allegations of damage from surface water, see Columbia v Melton, 81 SC 356, 62 SE 245, 399 (1908). Macedonia Baptist Church v Columbia, 195 SC 59, 10 SE2d 350 (1940).

City was not liable, under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, when business owner’s property flooded during rainstorm, where business owner failed to offer proof of any affirmative, positive acts which tended to show that actions of city caused flooding of his business property. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 840

The statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality’s works that he may recover. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 827(1)

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, a municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

Under statute establishing municipal power to drain surface water from city streets and authorizing action for damages caused by such drainage, proof of negligence, in the usual sense of the word, in the design or construction of the drainage facilities installed by a municipality for the purpose of carrying off surface water along a street or other public thoroughfare is not an essential ingredient of the cause of action in favor of an adjacent landowner whose property has been damaged by surface water cast upon it as the result of such construction. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

City was not liable for trespass, when business owner’s property flooded during rainstorm, for designing and maintaining municipal drainage system, where business owner failed to show any affirmative and intentional act necessary to sustain action for trespass. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

City was not liable for conversion, when business owner’s property flooded during rainstorm, for designing and maintaining municipal drainage system; business owner provided no evidence that city seized, disposed, denied use, or wrongfully took control of any goods or personal chattels belonging to him or his business. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

The municipality is not an insurer of the landowner against damage from surface water under Section 5‑31‑450; it is only for such damage as results from the municipality’s works that a landowner may recover. Therefore, unless the landowner pleads and proves an overt act against the municipality proximately causing the damages complained of, there is no cause of action under the statute. Taleff v. City of Greer (S.C.App. 1985) 284 S.C. 510, 327 S.E.2d 363.

When cause of action complete. The cause of action of an adjacent landowner is complete if, after demand, the municipality has failed to provide, along or under the street on which the drainage work has been done, sufficient drainage to prevent the passage of the surface water from such street over the landowner’s property. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It does not purport to make the municipality an insurer of the landowner against damage from surface water; it is only for such damage as results from the municipality’s works that he may recover. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246. Municipal Corporations 829

Diversion of surface water into inadequate watercourse. A municipality may not absolve itself from liability by diverting the surface water from its streets into a natural watercourse too small to carry it off. Hall v. City of Greenville (S.C. 1955) 227 S.C. 375, 88 S.E.2d 246.

It creates no liability where the damage resulted from highway construction and improvement carried out by the State Highway Department years before annexation of the road and land in question to the city. Hill v. City of Greenville (S.C. 1953) 223 S.C. 392, 76 S.E.2d 294.

City is liable for injury caused by negligent construction of drain pipes. Mayrant v. City of Columbia (S.C. 1907) 77 S.C. 281, 57 S.E. 857.

4. Condemnation

City’s design and maintenance of drainage system did not constitute affirmative, positive, aggressive act on part of city as required to support business owner’s claim for inverse condemnation claim when his business property near drainage system flooded during rainstorm; city’s replacement of double‑box culvert with large arched pipe and installation of riprap material along banks of creek near owner’s business did not cause flooding of business, and business owner’s own expert testified that installation of large arched pipe likely improved drainage situation in stormwater basin. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Eminent Domain 2.18

**SECTION 5‑31‑460.** Condemnation for use of another corporation.

 When any lands are condemned by a municipal corporation for the use of a corporation other than itself, such other corporation shall pay all the costs and expenses incurred in such condemnation, together with all damages which may be assessed in favor of the landowner under such condemnation proceedings, as well as all damages that may be recovered against such municipality in any court of competent jurisdiction by anyone injured or damaged by such condemnation. If in any such case the ingress or egress from the lands of any person be cut off, such corporation shall open, construct and maintain a convenient means of ingress and egress to the lands so cut off. No such condemnation shall be had for the benefit of any corporation unless it is made to appear to the satisfaction of the city or town council that the land sought to be condemned is necessary for the proper use and maintenance of a waterworks or for the proper protection of the health of the citizens of such municipality, the city or town council of such municipality to determine the question as to whether such land is necessary for the proper use and maintenance of such waterworks or for the proper protection of the health of such municipality.

HISTORY: 1962 Code Section 59‑225; 1952 Code Section 59‑225; 1942 Code Section 7304; 1932 Code Section 7304; Civ. C. ‘22 Section 4452; Civ. C. ‘12 Section 3029; 1905 (24) 867.

LIBRARY REFERENCES

Eminent Domain 160, 265(2).

Westlaw Key Number Searches: 148k160; 148k265(2).

C.J.S. Eminent Domain Sections 183 to 184, 367.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

NOTES OF DECISIONS

In general 1

1. In general

Constitutionality. As to the constitutionality of this section [Code 1962 Section 59‑225] when construed with a section of the Code of 1912, since repealed, see Paris Mountain Water Co. v. City of Greenville (S.C. 1918) 110 S.C. 36, 96 S.E. 545.

ARTICLE 7

Municipal Utilities Generally

**SECTION 5‑31‑610.** Construction and operation of municipal utilities.

 Any city or town may:

 (1) Construct, purchase, operate and maintain waterworks and electric light works within or without, partially within and partially without, their corporate limits for the use and benefit of such city or town and the inhabitants thereof;

 (2) Purchase, own, operate and maintain machinery, equipment and apparatus for generating either electricity or gas for the use and benefit of such city or town and the inhabitants thereof;

 (3) Acquire existing waterworks by condemnation;

 (4) Contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all, for the use of such cities and towns, and the inhabitants thereof; and

 (5) Sell, convey and dispose of any and all such properties, any such sale, conveyance or disposal of an electric light plant or water system, however, to be made under the provisions of Article 13 of this chapter and not under the succeeding provisions of this article.

HISTORY: 1962 Code Section 59‑241; 1952 Code Section 59‑241; 1942 Code Section 7280; 1932 Code Section 7280; Civ. C. ‘22 Section 4430; Civ. C. ‘12 Section 3015; Civ. C. ‘02 Section 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939; 1920 (31) 767, 797; 1922 (32) 953; 1953 (48) 272; 1987 Act No. 173, Section 11.

CROSS REFERENCES

Bridge or right of way of corporation affected by orders of drainage district, see Section 49‑19‑1470.

Constitutional provision for acquisition and operation of public utility systems, see SC Const, Art 8, Section 16.

Constitutional provision for assignment and regulation of territories for electrical and gas utilities, see SC Const, Art 8, Section 18.

Constitutional provision for regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const, Art 9, Section 1.

Contracts between municipal electric utilities and customers not regulated by the Public Service Commission, see Section 58‑27‑1010.

Contracts concerning systems of sewage disposal, see Section 5‑31‑890.

Electric Cooperative Act, see Sections 33‑49‑10 et seq.

Electric service in area becoming part of municipality after, see Section 58‑27‑670.

Electric utilities and cooperatives, see 58‑27‑10 et seq.

Exclusive municipal franchises to furnish electricity, see Section 58‑27‑410.

Joint Municipal Electric Power and Energy Act, see Sections 6‑23‑10 et seq.

Municipal Improvement Act of 1999, see Sections 5‑37‑10 et seq.

Municipally owned utilities being outside the jurisdiction of the Public Service Commission, see Section 58‑5‑30.

Ownership of property generally, see Section 5‑7‑40.

Power of condemnation, see Section 5‑7‑50.

Procedures for the condemnation of property, see the Eminent Domain Procedure Act, see Sections 28‑2‑10 et seq.

Provision authorizing creation of joint municipal water system, see Section 6‑25‑30.

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

Purchase by municipality of property of electrical utility, see Sections 58‑27‑1320 et seq.

Regulation of charges for electricity established by municipal franchise or contract, see Section 58‑27‑1000.

Rights and liabilities of municipal corporation in drainage improvement going through its limits, see Section 49‑17‑1810.

Rural community water districts, see Sections 6‑13‑10 et seq.

Sale of municipal electric or water plant, see Sections 5‑31‑1310 et seq.

Special purpose or public service districts generally, see Sections 6‑11‑10 et seq.

Taking of private property, see SC Const, Art 1, Section 13.

Water suppliers selling water wholesale to municipality being outside the jurisdiction of the Public Service Commission, see Section 58‑5‑40.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 16, Municipalities.

Attorney General’s Opinions

The City of Tega Cay has complied with the letter of the law by choosing not to hold an election regarding its issue of revenue bonds, and therefore, not to trigger the need to elect a board of commissioners of public works. S.C. Op.Atty.Gen. (Jan. 25, 2012) 2012 WL 440542.

A municipal corporation may purchase and improve a water supply system situated outside the corporate limits and expend available funds therefor. 1981 Op Atty Gen, No 81‑31, p 51.

NOTES OF DECISIONS

In general 1

Corporate limits 2

Discretion of municipality 3

1. In general

Cited in Peeples v South Carolina Power Co., 166 SC 150, 164 SE 605 (1932). Williams v Rock Hill, 177 SC 82, 180 SE 799 (1935). Simons v City Council, 181 SC 353, 187 SE 545 (1936). Spartanburg v Blalock, 223 SC 252, 75 SE2d 361 (1953).

For additional related cases, as to rule for determining whether the constitutional limit has been exceeded, see Todd v Laurens, 48 SC 395, 26 SE 682 (1897). State v Young, 66 SC 115, 44 SE 586 (1903). Childs v Columbia, 87 SC 566, 70 SE 296 (1911). Seegers v Gibbes, 72 SC 532, 52 SE 586 (1905). Harby v Jennings, 112 SC 479, 101 SE 649 (1919). Paris Mt. Water Co. v Greenville, 110 SC 36, 96 SE 545 (1918).

Applied in Waits v Ninety‑Six, 154 SC 350, 151 SE 576 (1930). Black v Fishburne, 84 SC 451, 66 SE 681 (1910).

City may purchase waterworks plant. South Carolina Const, Art 8, Section 5, expressly empowers a city to buy waterworks plant and this section [Code 1962 Section 59‑241], enacted to carry out such provision, is sufficient when considered with the Constitution, though it does not use the word “purchase.” Enterprise Real Estate Co. v City Council, 107 SC 492, 93 SE 184 (1917). Dick v Scarborough, 73 SC 150, 53 SE 86 (1905).

Title acquired is not specified. This section [Code 1962 Section 59‑241] does not specify the title that a town shall acquire and a reasonable construction is that the reference to the railroad statute is only for the purpose of procedure. Greenwood County v. Watkins (S.C. 1940) 196 S.C. 51, 12 S.E.2d 545.

And may lease such plant. Power to lease waterworks plant and equipment is conferred on city by this section [Code 1962 Section 59‑241], since grant of power to sell necessarily carries with it grant of power to transfer an interest less than an absolute one. Green v. City of Rock Hill (S.C. 1929) 149 S.C. 234, 147 S.E. 346. Municipal Corporations 271

And private company may operate such plant. City’s agreement whereby a company should manage and operate the water supply system is not invalid as involving exercise of power of taxation for private purpose. Green v. City of Rock Hill (S.C. 1929) 149 S.C. 234, 147 S.E. 346. Municipal Corporations 244(1); Public Contracts 187

Courts are to determine reasonableness of charges. A demurrer to a complaint by a city to restrain its board of public works from cutting off water and electric lights from the city on account of the refusal of the council to pay charges arbitrarily fixed by the board, the amount of which was in dispute between the board and the council, was improperly sustained, it being the duty of the board to resort to the courts to determine the reasonableness of the charges in view of this section [Code 1962 Section 59‑241] and related sections. City of Union v. Sartor (S.C. 1912) 91 S.C. 248, 74 S.E. 496.

Waterworks are for benefit of cities. Construction and operation of municipal waterworks should be “for the use and benefit of said cities and towns and its citizens.” Childs v. City of Columbia (S.C. 1911) 87 S.C. 566, 70 S.E. 296.

ARTICLE is permissive. The statute law of this State does not require municipal corporations to maintain waterworks, but in express terms merely authorizes towns and cities to build and operate waterworks as municipal property. Ancrum v. Camden Water, Light & Ice Co. (S.C. 1909) 82 S.C. 284, 64 S.E. 151.

It is in effect an amendment to charters limiting the indebtedness of cities. Todd v. City of Laurens (S.C. 1897) 48 S.C. 395, 26 S.E. 682.

Remedy for damage to property outside city. Under this section [Code 1962 Section 59‑241] and Code 1962 Section 59‑221, private persons whose property outside of the city limits is damaged by reason of emptying sewerage pipes into a stream, thereby contaminating the waters, may have compensation. Matheny v. City of Aiken (S.C. 1904) 68 S.C. 163, 47 S.E. 56.

Such remedy is exclusive of a common‑law action. Matheny v. City of Aiken (S.C. 1904) 68 S.C. 163, 47 S.E. 56.

2. Corporate limits

City properly exercised its legislative power to enact ordinance limiting expansion of the sewer system unless city council affirmatively votes to approve the expansion; no constitutional or statutory provision imposed duty on city to provide sewer service to all residents if it provided such service to any, and a statute provided utility services could be provided “partially within” corporate limits. Sunset Cay, LLC v. City of Folly Beach (S.C. 2004) 357 S.C. 414, 593 S.E.2d 462, rehearing denied. Municipal Corporations 712(6)

3. Discretion of municipality

The decision whether to grant a sewer extension request generally must be left to the sound discretion of municipal leaders, who are charged with considering all the various factors, including financial and economic implications, aesthetic and environmental concerns, feasibility of a particular plan, and the effect of an extension on the municipality’s long‑range zoning, planning, or organization. Sunset Cay, LLC v. City of Folly Beach (S.C. 2004) 357 S.C. 414, 593 S.E.2d 462, rehearing denied. Municipal Corporations 712(6)

**SECTION 5‑31‑620.** Election prerequisite to action under article.

 Before such construction, purchase, sale, conveyance or disposal of any such property, or any part thereof, shall be made under the provisions of this article, the city or town council of the municipality shall submit the question of such construction, purchase, sale, conveyance or disposal of the qualified registered electors of the city or town at an election to be ordered for that purpose by the city or town council and to be conducted in accordance with the laws governing municipal elections.

HISTORY: 1962 Code Section 59‑243; 1952 Code Section 59‑243; 1942 Code Section 7280; 1932 Code Section 7280; Civ. C. ‘22 Section 4430; Civ. C. ‘12 Section 3015; Civ. C. ‘02 Section 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939; 1920 (31) 767, 797; 1922 (32) 953.

CROSS REFERENCES

Conduct of elections, generally, see Sections 7‑5‑410 et seq., 7‑7‑10 et seq., 7‑9‑10 et seq., 7‑11‑10 et seq., 7‑13‑10 et seq., 7‑21‑10 et seq.

Municipal Bond Act, see Sections 5‑21‑210 et seq.

LIBRARY REFERENCES

Electricity 1.5.

Westlaw Key Number Search: 145k1.5.

C.J.S. Electricity Section 6.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, as to elections, see McWhirter v Newberry, 47 SC 418, 25 SE 216 (1896). Cleveland v City Council, 54 SC 83, 31 SE 871 (1899).

Election Provision of Municipal Utility Act, which required that a municipality hold an election approving any potential sale of a municipal utility, was unenforceable, as it was mutually dependent on Freeholder Provision of the Act held to violate Equal Protection Clause, which provision required that 25 percent of resident freeholders of municipality petition the municipality for an election; Election Provision could not be severed, as legislative intent was for both provisions to operate as a cohesive procedure. Sojourner v. Town of St. George (S.C. 2009) 383 S.C. 171, 679 S.E.2d 182. Statutes 1535(17)

But purchase of plant and issue of bonds were properly submitted together. By the terms of the 1922 amendment, it was entirely right, proper and legal for city council to submit to the voters in the election as one question only the matter of the purchase of the waterworks plant and the issue of the bonds to make payment of the purchase price. McDaniel v. Bristol (S.C. 1931) 160 S.C. 408, 158 S.E. 804.

Notes issued without election are unauthorized. Issuance of notes by commissioners of public works for waterworks system, with concurrence of city council, but without special election, is unauthorized under this section [Code 1962 Section 59‑243] and related sections. Hyams v. Carroll (S.C. 1928) 146 S.C. 470, 144 S.E. 153. Municipal Corporations 908

Under this section [Code 1962 Section 59‑243] the question of issuing bonds for the construction of a waterworks plant and for the construction of an electric light plant must be separately submitted, and when they were submitted together without opportunity to vote on each separately, the city had no authority to issue bonds. [Decided prior to the enactment of the Municipal Bond Act in 1951]. State v. Brasington (S.C. 1913) 93 S.C. 447, 76 S.E. 1086. Municipal Corporations 918(2)

Separate vote for different plants is required. This section [Code 1962 Section 59‑243] requires an opportunity to vote separately upon the issuance of bonds for either a waterworks or sewerage or lighting plant, and an election not submitting separately the questions of issuing bonds for a waterworks and for a sewerage system is void. [Decided prior to the enactment of the Municipal Bond Act in 1951]. Johnson v. Roddey (S.C. 1909) 83 S.C. 462, 65 S.E. 626.

**SECTION 5‑31‑630.** Election prerequisite to condemnation of waterworks.

 Proceedings to condemn existing waterworks shall not be instituted until after an election ordered by the city or town council upon thirty days’ notice shall have determined, by a majority of the qualified electors of the city or town, the policy of the city or town in favor of municipal ownership of waterworks.

HISTORY: 1962 Code Section 59‑244; 1952 Code Section 59‑244; 1942 Code Sections 7280, 7306; 1932 Code Sections 7280, 7306; Civ. C. ‘22 Sections 4430, 4454; Civ. C. ‘12 Section 3015; Civ. C. ‘02 Section 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939, 941; 1920 (31) 767, 797; 1922 (32) 953.

LIBRARY REFERENCES

Waters and Water Courses 183.

Westlaw Key Number Search: 405k183.

C.J.S. Waters Section 483.

**SECTION 5‑31‑640.** Petition prerequisite to election.

 Before any election shall be held under the provisions of this article at least twenty‑five per cent of the resident freeholders of the city or town, as shown by its tax books, shall petition the city or town council that such election be ordered.

HISTORY: 1962 Code Section 59‑245; 1952 Code Section 59‑245; 1942 Code Section 7280; 1932 Code Section 7280; Civ. C. ‘22 Section 4430; Civ. C. ‘12 Section 3015; Civ. C. ‘02 Section 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939; 1920 (31) 767, 797; 1922 (32) 953; 1947 (45) 175; 1965 (54) 642.

CROSS REFERENCES

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

NOTES OF DECISIONS

In general 1

1. In general

Election Provision of Municipal Utility Act, which required that a municipality hold an election approving any potential sale of a municipal utility, was unenforceable, as it was mutually dependent on Freeholder Provision of the Act held to violate Equal Protection Clause, which provision required that 25 percent of resident freeholders of municipality petition the municipality for an election; Election Provision could not be severed, as legislative intent was for both provisions to operate as a cohesive procedure. Sojourner v. Town of St. George (S.C. 2009) 383 S.C. 171, 679 S.E.2d 182. Statutes 1535(17)

This petition is a condition added to SC Const, Art 8, Section 5. Acker v. Cooley (S.C. 1934) 177 S.C. 144, 181 S.E. 10.

**SECTION 5‑31‑650.** Question may refer to issue of revenue bonds.

 Any question set forth in any petition for an election on the question of a city or town acquiring, by construction or purchase, and operating a waterworks system, presented and filed pursuant to Section 5‑31‑640, may, but need not, state that the cost of constructing or purchasing the waterworks system described in such question shall be met by the issuance of bonds payable solely from the revenues derived from the operation of such system.

HISTORY: 1962 Code Section 59‑246; 1952 Code Section 59‑246; 1942 Code Section 7280‑1; 1935 (39) 2.

LIBRARY REFERENCES

Waters and Water Courses 183.

Westlaw Key Number Search: 405k183.

C.J.S. Waters Section 483.

**SECTION 5‑31‑660.** Action if election result is favorable.

 If a majority of the electors voting in such election shall vote for the construction or purchase of such property in question, the city or town council shall so declare by ordinance and shall acquire the property. And if a majority of the electors voting in any such election shall vote for the sale of the property in question, the city or town council shall sell, convey and transfer the same as so authorized.

HISTORY: 1962 Code Section 59‑247; 1952 Code Section 59‑247; 1942 Code Section 7280; 1932 Code Section 7280; Civ. C. ‘22 Section 4430; Civ. C. ‘12 Section 3015; Civ. C. ‘02 Section 2008; 1899 (23) 49; 1914 (28) 511; 1915 (29) 53; 1916 (29) 939; 1920 (31) 767, 797; 1922 (32) 953.

CROSS REFERENCES

Provision that the powers conferred by this section and certain other sections of this article are cumulative, see Section 5‑31‑40.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

**SECTION 5‑31‑670.** Furnishing water for compensation; sewerage charge.

 Any city or town or special service district may, after acquiring a waterworks or sewer system, furnish water to persons for reasonable compensation and charge a minimum and reasonable sewerage charge for maintenance or construction of such sewerage system within such city or town or special service district.

HISTORY: 1962 Code Section 59‑248; 1952 Code Section 59‑248; 1942 Code Section 7280‑1; 1935 (39) 2; 1957 (50) 225; 1964 (53) 2182.

CROSS REFERENCES

Sewage collection, disposal and treatment by government entities, see Sections 6‑15‑10 et seq.

Water, sewage and garbage generally, see Sections 44‑55‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 712(8).

Waters and Water Courses 203(6).

Westlaw Key Number Searches: 268k712(8); 405k203(6).

C.J.S. Municipal Corporations Section 1538.

C.J.S. Waters Sections 681, 684 to 686.

NOTES OF DECISIONS

In general 1

1. In general

City did not have duty under water‑supply statute governing city residents to charge non‑city residents a “reasonable” fee for water; city’s duty was defined by contract with non‑residents, and fee was the same as charged to all non‑residents. Sloan v. City of Conway (S.C. 2001) 347 S.C. 324, 555 S.E.2d 684, rehearing denied. Water Law 2184

**SECTION 5‑31‑680.** Sale, lease or other disposition of municipally owned natural gas system.

 Notwithstanding any other provisions of this article, any city or town may sell, lease or otherwise dispose of any municipally owned natural gas system upon the favorable vote of a majority of the qualified electors of the municipality voting in a general or special election held after notice thereof, explaining in general terms the proposed transaction, has been given in a newspaper of general circulation in the city or town once a week for two successive weeks, the first of which shall appear not more than thirty days prior to the election date. Such election shall be held in accordance with the laws governing municipal elections and no petition as prescribed by Section 5‑31‑640 shall be required in connection therewith.

HISTORY: 1962 Code Section 59‑249; 1967 (55) 623.

LIBRARY REFERENCES

Gas 3.

Westlaw Key Number Search: 190k3.

C.J.S. Gas Section 4.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 5‑31‑690.** Restrictions on interruption of electric or gas services to residential customer for nonpayment of bill; exceptions.

 (A) Except as provided in subsection (B) of this section, a municipality must not interrupt electric or gas service to any residential customer for nonpayment of a bill until twenty‑five days have elapsed from the date of billing.

 (B) A municipality may interrupt electric or natural gas service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity or natural gas and his account balance on a daily basis and the balance of that customer’s prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric or natural gas service may be interrupted when the balance of his prepay account reaches zero; (2) electric or natural gas service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the municipality to give the customer notice of the impending interruption by telephone or electronically; and (3) electric or natural gas service must not be interrupted except during hours when the municipality is accepting cash payments. For purposes of this subsection, a business day is a day in which the municipality, or an agent, is accepting cash payments.

 (C) Nothing contained herein shall be construed so as to relieve a municipality of the requirements of Act 313 of 2006.

 (D) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law and notwithstanding Section 58‑27‑210, the Public Service Commission shall have no jurisdiction over a municipality by reason of this section.

HISTORY: 2010 Act No. 258, Section 5, eff June 11, 2010.

ARTICLE 9

Sewerage Systems Generally and Sewerage Commissions

**SECTION 5‑31‑810.** Establishment of municipal sewerage system.

 Any city or town in this State may incur bonded indebtedness and own and possess property to any amount within the discretion of the municipal authorities of such city or town for the purposes of purchase, establishment and maintenance of sewerage systems; provided, that the question of such purchase, establishment or indebtedness shall be submitted to an election and no such purchase, or establishment or indebtedness shall be made except upon the vote in favor thereof of a majority of the electors of such city or town who are qualified to vote on the bonded indebtedness of such city or town; and provided, further, that the question of incurring such indebtedness be submitted with favorable results to the freeholders of such municipalities by petition.

HISTORY: 1962 Code Section 59‑481; 1952 Code Section 59‑481; 1942 Code Section 7278; 1932 Code Section 7278; Civ. C. ‘22 Section 4429; 1918 (30) 801.

CROSS REFERENCES

Constitutional provision for regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const, Art 9, Section 1.

Contracts by water companies to disconnect water service for nonpayment of sewer charges, see Section 58‑7‑40.

Provision authorizing creation of joint municipal water system, see Section 6‑25‑30.

Sewage collection, disposal and treatment by government entities, see Sections 6‑15‑10 et seq.

State grants for water and sewer authorities, districts or systems, see Sections 6‑19‑10 et seq.

Water, sewage and garbage generally, see Sections 44‑55‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 708.

Westlaw Key Number Search: 268k708.

C.J.S. Municipal Corporations Sections 1535 to 1536.

NOTES OF DECISIONS

In general 1

1. In general

For additional related case, see Harby v. Jennings (S.C. 1919) 112 S.C. 479, 101 S.E. 649.

Purchase of plant and issuance of bonds were properly submitted together. The court held that the city council properly submitted to voters as one question matter of purchase of waterworks plant and issuance of bonds therefor, in McDaniel v. Bristol (S.C. 1931) 160 S.C. 408, 158 S.E. 804.

No limitations exist on manner of submitting questions. Under this section [Code 1962 Section 59‑481] bonds issued by a town, pursuant to an election submitting as a general proposition the purpose of establishing and constructing waterworks and sewerage system within corporate limits, were valid and binding obligations, there being no constitutional limitations relative to the manner in which questions are to be submitted. Waits v. Town of Ninety‑Six (S.C. 1930) 154 S.C. 350, 151 S.E. 576, decided prior to the enactment of the Municipal Bond Act in 1951. See SC Const, Art 8, Section 5.

**SECTION 5‑31‑820.** Sewerage commission; composition.

 Any municipal corporation in this State which is about to enlarge, extend or establish a system of sewerage therein may, by its mayor and aldermen, intendant and wardens or city or town council, elect five or seven of its citizens, who shall be freeholders therein, as a sewerage commission, which shall be known and designated as the sewerage commission of such municipal corporation; provided, that not more than three persons so elected as members of said commission shall be members of the body electing such commission. The members of the sewerage commission shall continue as such for a term of two years and until their successors are elected or until the enlarging, extending or establishment of the system of sewerage is fully completed, as contemplated under the laws and ordinances providing therefor.

HISTORY: 1962 Code Section 59‑482; 1952 Code Section 59‑482; 1942 Code Section 7295; 1932 Code Section 7295; Civ. C. ‘22 Section 4444; Civ. C. ‘12 Section 3021; 1902 (23) 1040.

CROSS REFERENCES

Provision that joint municipal water system be managed and controlled by commission, see Section 6‑25‑60.

LIBRARY REFERENCES

Municipal Corporations 708.

Westlaw Key Number Search: 268k708.

C.J.S. Municipal Corporations Sections 1535 to 1536.

NOTES OF DECISIONS

In general 1

1. In general

Right of commissioners of public works to bonds, etc., as against sewerage commission. State v. Young (S.C. 1903) 66 S.C. 115, 44 S.E. 586.

**SECTION 5‑31‑830.** Sewerage commission; oaths of members; officers; vacancies and removal from office.

 The members of the sewerage commission, before entering upon their duties, shall take the same oaths required of members of the body electing them. They shall organize by electing one of the members as chairman thereof and a secretary, who may be the same person as the clerk of the city or town council.

 Any vacancy occurring in the membership of the commission shall be filled by election as provided in Section 5‑31‑820 and any member thereof may be removed for cause by any such city or town council.

HISTORY: 1962 Code Section 59‑485; 1952 Code Section 59‑485; 1942 Code Sections 7295, 7296; 1932 Code Sections 7295, 7296; Civ. C. ‘22 Sections 4444, 4445; Civ. C. ‘12 Sections 3021, 3022; 1902 (23) 1040.

LIBRARY REFERENCES

Municipal Corporations 708.

Westlaw Key Number Search: 268k708.

C.J.S. Municipal Corporations Sections 1535 to 1536.

**SECTION 5‑31‑840.** Sewerage commission; duties.

 Any such sewerage commission shall have the construction of the sewerage system in charge and, subject to the approval of the city or town council, shall advertise for bids for at least thirty days in two or more newspapers for the work to be done and for material to be used therein, with the right to reject any and all bids, and shall enter into contracts with the lowest responsible bidders thereon and secure competent persons, if deemed advisable, to superintend the construction and counsel and advise in matters relating thereto.

HISTORY: 1962 Code Section 59‑486; 1952 Code Section 59‑486; 1942 Code Section 7296; 1932 Code Section 7296; Civ. C. ‘22 Section 4445; Civ. C. ‘12 Section 3022; 1902 (23) 1040.

LIBRARY REFERENCES

Municipal Corporations 328.

Westlaw Key Number Search: 268k328.

C.J.S. Municipal Corporations Sections 1027 to 1029.

NOTES OF DECISIONS

In general 1

1. In general

Agreement between Sewer District with former owner of formerly privately owned sewer system transferred to District reserving to former owner power to approve or disapprove, for connection to system, any project other than single family dwelling and small commercial establishments of defined class is unlawful and against public policy; abdication by commissioners of their statutory and constitutional responsibility to act for public welfare to private party who has no duty to give public welfare any deliberation is improper and intolerable. G. Curtis Martin Inv. Trust v. Clay (S.C. 1980) 274 S.C. 608, 266 S.E.2d 82. Municipal Corporations 712(2)

**SECTION 5‑31‑850.** Sewerage commission; contracts with member.

 No member of any such commission shall be permitted to enter into any contract with such commission for furnishing materials or for the construction of any of the work of such sewerage system.

HISTORY: 1962 Code Section 59‑487; 1952 Code Section 59‑487; 1942 Code Section 7296; 1932 Code Section 7296; Civ. C. ‘22 Section 4445; Civ. C. ‘12 Section 3022; 1902 (23) 1040.

LIBRARY REFERENCES

Municipal Corporations 231(2).

Westlaw Key Number Search: 268k231(2).

C.J.S. Municipal Corporations Section 907.

**SECTION 5‑31‑860.** Sewerage commission; expenditures.

 No such sewerage commission shall expend more money in enlarging, extending or establishing the system of sewerage than has been appropriated therefor, according to law. All payments for material furnished and work performed shall be made by the treasurer of the city or town council on warrants issued by the commission and approved by the city or town council.

HISTORY: 1962 Code Section 59‑488; 1952 Code Section 59‑488; 1942 Code Section 7296; 1932 Code Section 7296; Civ. C. ‘22 Section 4445; Civ. C. ‘12 Section 3022; 1902 (23) 1040.

CROSS REFERENCES

Provision authorizing joint municipal water system to incur debt by issuing bonds, see Section 6‑25‑110.

LIBRARY REFERENCES

Municipal Corporations 370.

Westlaw Key Number Search: 268k370.

C.J.S. Municipal Corporations Sections 1069, 1079 to 1080, 1087 to 1088.

**SECTION 5‑31‑870.** Sewerage commission; records.

 A permanent record shall be made and kept by each sewerage commission of all its proceedings, contracts and other matters done and performed by it, including an accurate plan of the work done, showing the situation of the sewerage pipes, manholes, water flushes and all other things relating thereto that should be shown. And such records shall be open at all times to the inspection of any citizen of such municipality and to the city or town council thereof and shall be turned over to such city or town council as a permanent record thereof, with all convenient speed, on the completion of the work.

HISTORY: 1962 Code Section 59‑489; 1952 Code Section 59‑489; 1942 Code Section 7296; 1932 Code Section 7296; Civ. C. ‘22 Section 4445; Civ. C. ‘12 Section 3022; 1902 (23) 1040.

LIBRARY REFERENCES

Municipal Corporations 708.

Westlaw Key Number Search: 268k708.

C.J.S. Municipal Corporations Sections 1535 to 1536.

**SECTION 5‑31‑880.** Use of streets, highways and public buildings for sewerage purposes.

 Any municipal corporation in this State, for the purpose of enlarging, extending or establishing a system of sewerage, may use any of the streets of such municipal corporation, and any of the public buildings, roads and highways of the county in which the municipality is located for the purpose of constructing, operating, repairing and protecting such system. But it shall restore all highways to as good a condition as they were in prior to such use without any unnecessary delay and with the least possible inconvenience to the public.

HISTORY: 1962 Code Section 59‑490; 1952 Code Section 59‑490; 1942 Code Section 7299; 1932 Code Section 7299; Civ. C. ‘22 Section 4447; Civ. C. ‘12 Section 3024; 1902 (23) 1040; 1939 (41) 412.

CROSS REFERENCES

Excavation by municipality in or across roads with regard to municipally owned waterworks or sewerage outside its limits, see Section 57‑7‑70.

LIBRARY REFERENCES

Municipal Corporations 711.

Westlaw Key Number Search: 268k711.

C.J.S. Municipal Corporations Sections 1535, 1538.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 59‑490] specifically authorizes the use by a city of public streets, roads, etc., for the purposes of a sewage system. City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290.

**SECTION 5‑31‑890.** Contracts as to systems of sewage disposal.

 All municipalities in this State owning, controlling, leasing or planning to construct a system of sewage disposal with or without outfalls, rights of way, easements and appurtenances thereto, may, through proper officials, commissioners of public works, sewer commissions or any of them or like bodies, enter into contracts and agreements with persons or political subdivisions outside the corporate limits of such municipalities, whether contiguous thereto or not, for the construction, maintenance, operation, improvement, leasing, controlling or furnishing the use, benefits and facilities thereof upon such terms and at such rates and charges as may be fixed by the contract or agreement between the parties when, in the judgment of the proper officials, commissioners of public works, sewer commissions, or any of them or like bodies, as the case may be, it is for the best interest of the city, town or municipality so to do. But no such contract or agreement shall be for a period exceeding thirty years from the effective date thereof.

 Nothing herein contained shall be construed as abrogating, limiting or qualifying any contracts or agreements of the nature set forth herein which may have heretofore been entered into and under which the parties thereto are operating.

HISTORY: 1962 Code Section 59‑491; 1952 Code Section 59‑491; 1948 (45) 1686.

LIBRARY REFERENCES

Municipal Corporations 712(2).

Westlaw Key Number Search: 268k712(2).

C.J.S. Municipal Corporations Section 1537.

Attorney General’s Opinions

The city council would be a proper body to enter a contract of the kind described in section 5‑31‑890. S.C. Op.Atty.Gen. (Dec. 12, 2011) 2011 WL 6959368.

Section 5‑31‑890 may allow the City of Barnwell to extend its sewer line, but not its water line, to a particular property beyond its municipal boundaries if they contract to do so. S.C. Op.Atty.Gen. (Sept. 27, 2011) 2011 WL 4592370.

NOTES OF DECISIONS

In general 1

1. In general

Agreement between Sewer District with former owner of formerly privately owned sewer system transferred to District reserving to former owner power to approve or disapprove, for connection to system, any project other than single family dwelling and small commercial establishments of defined class is unlawful and against public policy; abdication by commissioners of their statutory and constitutional responsibility to act for public welfare to private party who has no duty to give public welfare any deliberation is improper and intolerable. G. Curtis Martin Inv. Trust v. Clay (S.C. 1980) 274 S.C. 608, 266 S.E.2d 82. Municipal Corporations 712(2)

**SECTION 5‑31‑900.** General ordinances, rules and regulations.

 Any such municipal corporation may enact all necessary ordinances, rules and regulations consistent with law for the establishment, construction, maintenance, operation, protection, use, control and repairing of its system of sewerage, both within and without its corporate limits.

HISTORY: 1962 Code Section 59‑493; 1952 Code Section 59‑493; 1942 Code Section 7299; 1932 Code Section 7299; Civ. C. ‘22 Section 4447; Civ. C. ‘12 Section 3024; 1902 (23) 1040; 1939 (41) 412.

LIBRARY REFERENCES

Municipal Corporations 711.

Westlaw Key Number Search: 268k711.

C.J.S. Municipal Corporations Sections 1535, 1538.

**SECTION 5‑31‑910.** Contracts with public agency to provide municipalities with primary, secondary or tertiary sewage treatment or to dispose of solid waste; definitions.

 As used in Sections 5‑31‑910 to 5‑31‑940, the following terms shall have the following meanings unless the context clearly indicates otherwise:

 (a) “council” shall mean the governing body of any incorporated municipality.

 (b) “municipality” shall mean any incorporated municipality under the laws of the State of South Carolina.

 (c) “public agency” shall mean any County, Authority, Special Purpose District, or other political subdivision of the State of South Carolina empowered within its service area either to dispose of solid waste or to provide primary, secondary or tertiary sewage treatment.

HISTORY: 1975 (59) 745.

CROSS REFERENCES

Joint agency between governmental bodies relating to solid waste disposal facilities, see Sections 6‑16‑10 et seq.

**SECTION 5‑31‑920.** Contracts with public agency to provide municipalities with primary, secondary or tertiary sewage treatment or to dispose of solid waste; terms and conditions.

 Each municipality, subject to compliance with the provisions of Section 5‑31‑930, is authorized to enter into contracts with any public agency in order to provide such municipality with primary, secondary or tertiary sewage treatment or in order to dispose of solid waste, upon such terms and conditions as its council shall deem appropriate, including, without limitation, the following:

 (a) that the municipality unconditionally obligates itself to pay a stipulated or ascertainable amount for a designated period of time;

 (b) that the obligation of the municipality under the contract is secured by a pledge of the municipality’s full faith, credit and taxing power for the payment of which an unlimited ad valorem tax shall be levied upon all taxable property in the municipality;

 (c) that the obligation of the municipality under the contract is primarily payable from designated revenues other than revenues derived from ad valorem taxes;

 (d) that the obligation of the municipality under the contract is primarily payable from designated revenues other than revenues derived from ad valorem taxes and such obligation is guaranteed to the extent such revenues are insufficient by a pledge of the municipality’s full faith, credit and taxing power for the payment of which an unlimited ad valorem tax shall be levied upon all taxable property in the municipality.

HISTORY: 1975 (59) 745.

CROSS REFERENCES

Joint agency between governmental bodies relating to solid waste disposal facilities, see Sections 6‑16‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 712(2).

Westlaw Key Number Search: 268k712(2).

C.J.S. Municipal Corporations Section 1537.

**SECTION 5‑31‑930.** Contracts with public agency to provide municipalities with primary, secondary or tertiary sewage treatment or to dispose of solid waste; ordinance.

 No municipality shall enter into a contract under the authorization of Sections 5‑31‑910 to 5‑31‑940 except pursuant to an Ordinance which shall have been duly enacted by its council after compliance with the following:

 (a) Subsequent to the introduction of such Ordinance and prior to its second reading, a public hearing shall be held on the question of the passage of such Ordinance at which all interested persons may appear and be heard. Such hearing shall be held after notice thereof has been published in a newspaper having general circulation in the municipality not less than seven (7) days prior to the date of the hearing.

 (b) The Ordinance shall not be given final reading sooner than seven (7) days following the holding of the public hearing prescribed herein.

HISTORY: 1975 (59) 745.

CROSS REFERENCES

Joint agency between governmental bodies relating to solid waste disposal facilities, see Sections 6‑16‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 712(2).

Westlaw Key Number Search: 268k712(2).

C.J.S. Municipal Corporations Section 1537.

**SECTION 5‑31‑940.** Contracts with public agency to provide municipalities with primary, secondary or tertiary sewage treatment or to dispose of solid waste; powers and authorizations cumulative.

 The powers and authorizations herein are in addition to all other powers and authorizations now or hereafter vested in municipalities and none of the provisions of Sections 5‑31‑910 to 5‑31‑940 is intended to be construed as a limitation upon or in derogation of any such other powers and authorizations.

HISTORY: 1975 (59) 745.

CROSS REFERENCES

Joint agency between governmental bodies relating to solid waste disposal facilities, see Sections 6‑16‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 712(2).

Westlaw Key Number Search: 268k712(2).

C.J.S. Municipal Corporations Section 1537.

ARTICLE 11

Unauthorized Use of Municipal Water System

**SECTION 5‑31‑1110.** Interfering with or opening fire hydrants.

 It shall be unlawful for any person not connected with the commissioners of public works of any municipality of this State, the fire department of any such municipality or the body charged with the duties of commissioners of public works in municipalities which have no such commissioners to interfere with or open for any purpose whatever any of the fire hydrants on the mains of the waterworks of such municipalities, except in case of fire, without first having obtained a proper permit so to do from the authorized representatives of such commissioners, fire department or other such body.

HISTORY: 1962 Code Section 59‑421; 1952 Code Section 59‑421; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

**SECTION 5‑31‑1120.** Interfering with property or appurtenances.

 It shall be unlawful for any person to interfere or tamper with any of the property or appurtenances belonging to a municipality or controlled by the commissioners of public works or other body charged with the duties of commissioners of public works in municipalities which have no such commissioners in connection with the waterworks system or to turn on or off the supply of water to any premises at and with the curb cock, without first having obtained the proper permit so to do from the authorized representatives of such municipality or the commissioners of public works or other such body.

HISTORY: 1962 Code Section 59‑422; 1952 Code Section 59‑422; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

CROSS REFERENCES

Interference with sewers and waterworks, see Sections 5‑31‑20 and 6‑11‑280.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

**SECTION 5‑31‑1130.** Injury or obstructions to systems; pollution of water.

 It shall be unlawful for any person to remove, obstruct, deface or injure, within or without the corporate limits of any municipality, any of the fire hydrants, public drinking fountains or valve covers or any pipe, ditch, drain or appurtenances of the waterworks of any municipality or to pollute the water supply of any municipality of this State, controlled by such municipality or by the commissioners of public works of such municipality or other body charged with the duties of commissioners of public works in municipalities which have no such commissioners.

HISTORY: 1962 Code Section 59‑423; 1952 Code Section 59‑423; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

**SECTION 5‑31‑1140.** Unauthorized use of water.

 Any person who has a contract, agreement, license or permission, oral or written, with or from any municipality or the commissioners of public works thereof or other body charged with the duties of commissioners of public works in municipalities which have no such commissioners for the use of water belonging to or furnished by any such municipality, commissioners of public works or other such body, for certain specified purposes, who shall willfully and intentionally withdraw or cause to be withdrawn water in any manner and appropriate it to his own use or to the use of any other person, for purposes other than those specified, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Section 5‑31‑1170. Any such person to whom such water is furnished from or by means of a meter, who shall, willfully and with intention to cheat and defraud any such municipality, commissioners or other such body, alter or interfere with such meter or by any contrivance whatsoever withdraw or take off water in any manner except through such meter, shall be guilty of a misdemeanor and be punished as provided in said section.

HISTORY: 1962 Code Section 59‑424; 1952 Code Section 59‑424; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

NOTES OF DECISIONS

In general 1

1. In general

Violation is not larceny. In order for the installation and use of a contrivance for diverting water from the meter to be unlawful, such contrivance must be installed and used with intent to cheat and defraud, yet this section [Code 1962 Section 59‑424] merely denominates its violation a misdemeanor; and the procurement of water without paying therefor by the use of such a device is not larceny under the law of this State. State v. Gregory (S.C. 1939) 191 S.C. 212, 4 S.E.2d 1.

**SECTION 5‑31‑1150.** Use of water without contract is a misdemeanor.

 Any person who has no contract, agreement, license or permission with or from any municipality or the commissioners of public works thereof or other body charged with the duties of commissioners of public works in municipalities which have no such commissioners, for the use of water belonging to or furnished by such municipality, commissioners or other such body, who shall willfully withdraw or cause to be withdrawn in any manner and appropriate such water from the water mains or pipes of such municipality, commissioners or other such body or any water mains or pipes connected therewith, for his own use or for the use of any other person, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Section 5‑31‑1170.

HISTORY: 1962 Code Section 59‑425; 1952 Code Section 59‑425; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

**SECTION 5‑31‑1160.** Tapping water main without permit.

 It shall not be lawful for any person to extend service pipes attached to the mains and water supply on any premises within or without a municipality without first obtaining permission therefor in writing from the municipality or the commissioners of public works or other body charged with the duties of commissioners of public works in municipalities which have no such commissioners and before any workman or plumber shall perform any work connected with the extension of such service pipes written permission for such extension shall be obtained.

HISTORY: 1962 Code Section 59‑426; 1952 Code Section 59‑426; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

**SECTION 5‑31‑1170.** Violations.

 Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars or by imprisonment not exceeding sixty days, or by both such fine and imprisonment.

HISTORY: 1962 Code Section 59‑427; 1952 Code Section 59‑427; 1942 Code Section 1203; 1932 Code Section 1203; 1925 (34) 98.

LIBRARY REFERENCES

Waters and Water Courses 212.

Westlaw Key Number Search: 405k212.

C.J.S. Waters Section 739.

ARTICLE 13

Sale of Municipal Electric or Water Plant

**SECTION 5‑31‑1310.** Election to consider sale of light or water plants.

 Should the city or town council of any city or town in this State which owns its electric light plant and water system, either or both, at any time receive an offer for such electric light plant or water system, the council may order a special election in such city or town for the purpose of determining whether or not such offer shall be accepted.

HISTORY: 1962 Code Section 59‑441; 1952 Code Section 59‑441; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

CROSS REFERENCES

Application of Article 7 of this chapter to sale of municipal electric or water plant, see Section 5‑31‑610(5).

Electric utilities and cooperatives generally, see 58‑27‑10 et seq.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

NOTES OF DECISIONS

In general 1

1. In general

Sale of water system for less than intrinsic value thereof. Babb v. Green (S.C. 1952) 222 S.C. 534, 73 S.E.2d 699.

**SECTION 5‑31‑1320.** Security from proposed purchaser.

 Prior to the ordering of such election, such city or town council may take from the proposed purchaser such security as it may deem sufficient for the performance of the offer of purchase in the event of its acceptance.

HISTORY: 1962 Code Section 59‑442; 1952 Code Section 59‑442; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

**SECTION 5‑31‑1330.** Notice of election.

 In the event such election be ordered, six weeks’ notice thereof shall be given by publication in a newspaper of general circulation in such city or town once each week for six weeks preceding the date of such election. Such notice shall contain in substance the terms of the offer for such property.

HISTORY: 1962 Code Section 59‑443; 1952 Code Section 59‑443; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

CROSS REFERENCES

Charges for legal advertisements in newspapers, see Sections 15‑29‑80 et seq.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 5‑31‑1340.** Persons entitled to vote; conduct of election.

 The city or town council shall conduct the election, appoint managers therefor and canvass and declare the result thereof in the manner provided by law in reference to general elections in such city or town. All qualified electors of such city or town shall be entitled to vote in the election.

HISTORY: 1962 Code Section 59‑445; 1952 Code Section 59‑445; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

CROSS REFERENCES

Conduct of elections generally, see Sections 7‑13‑10 et seq.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

**SECTION 5‑31‑1350.** Sale if majority favors.

 In the event the result of the election is in favor of the acceptance of the offer so submitted to the people, the city or town council of such city or town shall accept such offer and complete the sale by the conveyance to the purchaser of the property purchased, executing and delivering all proper deeds of conveyance therefor.

HISTORY: 1962 Code Section 59‑446; 1952 Code Section 59‑446; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

**SECTION 5‑31‑1360.** Operating agreement with purchaser; maximum rates.

 In connection with such sale, such city or town council may make and enter into an agreement with the purchaser for the operation of the property so purchased and the furnishing to the people of the city or town of electric current or water or both, as the case may be, and may fix maximum rates therefor during such period as may then be agreed upon.

HISTORY: 1962 Code Section 59‑448; 1952 Code Section 59‑448; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

CROSS REFERENCES

Regulation of charges for electricity established by municipal franchise or contract, see Section 58‑27‑1000.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 183.

Westlaw Key Number Searches: 145k1.5; 405k183.

C.J.S. Electricity Section 6.

C.J.S. Waters Section 483.

**SECTION 5‑31‑1370.** Grant of franchise.

 In connection with such sale such city or town council may grant to the purchaser an exclusive or nonexclusive franchise for furnishing electric current or water, or both, to such city or town and the inhabitants thereof. But no such exclusive franchise shall affect any existing contractual rights and no such exclusive franchise for furnishing water shall be for a period exceeding thirty years.

HISTORY: 1962 Code Section 59‑449; 1952 Code Section 59‑449; 1942 Code Section 7277; 1932 Code Section 7277; 1927 (35) 176; 1930 (36) 1388; 1932 (37) 1128.

CROSS REFERENCES

Exclusive municipal franchises to furnish electricity, see Section 58‑27‑410.

Regulation of charges for electricity established by municipal franchise or contract, see Section 58‑27‑1000.

LIBRARY REFERENCES

Electricity 8.1(1).

Waters and Water Courses 189.

Westlaw Key Number Searches: 145k8.1(1); 405k189.

C.J.S. Electricity Sections 11 to 12.

C.J.S. Waters Sections 483, 582 to 588.

ARTICLE 15

Extension of Water and Sewer Systems

Editor’s Note

Certain limitations on the performance of municipal services outside of corporate limits are prescribed in Chapter 7 of this Title. Articles 15 through 19 of Chapter 31 should be construed with Chapter 7 to understand the applicable limitations.

**SECTION 5‑31‑1510.** Extension and assessment therefor.

 Upon the written request of any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof the city or town may provide such service and levy an assessment against the property of the owner so requesting such service for the costs thereof.

HISTORY: 1962 Code Section 59‑461; 1952 Code Section 59‑461; 1945 (44) 256; 1947 (45) 506.

CROSS REFERENCES

Assessments for sewer lateral connection lines and extensions thereof within the municipality, see Section 5‑31‑2030(4).

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

Attorney General’s Opinions

Lawful contract by county officials will normally be sustained by court regardless of fact such officials may have made bad bargain. 1990 Op Atty Gen No. 90‑29.

Municipality may agree to sell utility services to industrial park in adjacent county provided such agreement is in accordance with applicable provisions of Sections 5‑31‑1510, et seq., 5‑31‑17, et seq. and 5‑31‑1910, et seq. Park serviced by agreement would not qualify as jointly developed industrial park under Article VIII, Section 13(D) of State Constitution. 1990 Op Atty Gen No. 90‑29.

Five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from exemption by other statutory authority. 1990 Op Atty Gen No. 90‑29.

Neither Article VIII, Section 13(D) of State Constitution nor Section 4‑1‑170 requires that school districts receive fees from jointly developed industrial parks at same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions. 1990 Op Atty Gen No. 90‑29.

**SECTION 5‑31‑1520.** Extension beyond city limits.

 Any city or town may extend its system to any property beyond the city limits provided that both the water and sewer systems are extended to such property.

HISTORY: 1962 Code Section 59‑462; 1952 Code Section 59‑462; 1945 (44) 256; 1947 (45) 506.

CROSS REFERENCES

Excavation by municipality in or across road in connection with municipally owned waterworks or sewerage outside its limits, see Section 57‑7‑70.

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

Attorney General’s Opinions

Section 5‑31‑890 may allow the City of Barnwell to extend its sewer line, but not its water line, to a particular property beyond its municipal boundaries if they contract to do so. S.C. Op.Atty.Gen. (Sept. 27, 2011) 2011 WL 4592370.

Both water and sewer systems must be extended to property beyond city limits, unless such property is contiguous to city in which case water system alone may be extended pursuant to Code 1962 Section 59‑531. Atty Gen Op Feb 25, 1963.

**SECTION 5‑31‑1530.** Ordinance to provide for payment of costs.

 Any incorporated city or town of this State may provide by ordinance for the payment of the costs of extending its water and sewer system to any property owner as herein provided.

HISTORY: 1962 Code Section 59‑463; 1952 Code Section 59‑463; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1540.** Entry of assessments.

 Such assessments shall be entered in a book kept by the city or town clerk, to be entitled “water and sewer assessment liens,” stating the names of the owners, the location of the property, the amount of the assessment and the time or times of payment.

HISTORY: 1962 Code Section 59‑464; 1952 Code Section 59‑464; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1550.** Entry of assessments when extensions are beyond city limits.

 When such water and sewer system is extended to property beyond the city limits the assessments shall be entered in an assessment book in the office of the clerk of the court for the county in which such city is located which shall be furnished by the city.

HISTORY: 1962 Code Section 59‑465; 1952 Code Section 59‑465; 1945 (44) 256; 1947 (45) 506.

CROSS REFERENCES

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1560.** Lien of assessments.

 The assessments so laid shall constitute a lien upon the property so assessed which shall be superior to all other liens except the liens for county, State and city taxes and payment thereof may be enforced as the payment of city or town taxes is enforced. Such lien shall continue from the date of entry on the “water and sewer assessment liens” book until the expiration of five years from the date when final payment is due and payable, unless sooner paid.

HISTORY: 1962 Code Section 59‑466; 1952 Code Section 59‑466; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1570.** Effect of default in payment of installment.

 Upon default in the payment of any installment or deferred portion of any assessment, at the time and in accordance with the terms and conditions fixed by ordinance, the total amount of such assessment then unpaid, including deferred installments or payments and interest, shall immediately become due and collectible, at the option of the city or town, and shall be collectible as city or town taxes are collected, with such penalties and costs as are provided for the payment of such taxes.

HISTORY: 1962 Code Section 59‑467; 1952 Code Section 59‑467; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1580.** Entry of satisfaction of assessments.

 It shall by ordinance be made the duty of the city or town clerk to make entry of satisfaction on such water and sewer assessment liens book as soon as full payment is made, and the lien shall be thereby extinguished.

HISTORY: 1962 Code Section 59‑468; 1952 Code Section 59‑468; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1590.** Deposit and use of receipts.

 The amounts of money raised by such assessments shall constitute and be kept as a separate fund, to be used for the purpose for which it was raised.

HISTORY: 1962 Code Section 59‑469; 1952 Code Section 59‑469; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1600.** Certificates of indebtedness against assessments.

 The city or town council of any such city or town may issue certificates of indebtedness showing the amounts of money due to such city or town by property owners as deferred payments or installments upon such assessments and may sell any such certificates of indebtedness or borrow money by pledging any of them as collateral security for the payment of such debt or debts and, in the event of either a sale or collateral pledge of such certificates, or any of them, may pledge the faith and credit of such city or town for the payment thereof and guarantee the payment thereof for and in the name of such city or town. In any such case it shall not be necessary for a separate certificate of indebtedness to be issued showing the amount due from each property owner, but such certificates may be issued in denominations of one hundred dollars, or any multiple thereof. Nor shall it be necessary for the maturities of such certificates of indebtedness to correspond exactly to the maturities of such deferred payments or installments of the assessments and such certificates may be issued having fixed dates of maturities, but, in the event of payment of the assessments before the maturity of the certificates, the amount of such assessments so paid shall be placed in a sinking fund and held solely for the payment of the certificates of indebtedness issued against them.

HISTORY: 1962 Code Section 59‑470; 1952 Code Section 59‑470; 1945 (44) 256; 1947 (45) 506.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

ARTICLE 17

Extension of Water and Sewer Systems Beyond Corporate Limits of Towns Between 3,000 and 4,000

Editor’s Note

Certain limitations on the performance of municipal services outside of corporate limits are prescribed in Chapter 7 of this Title. Articles 15 through 19 of Chapter 31 should be construed with Chapter 7 to understand the applicable limitations.

**SECTION 5‑31‑1710.** Authorization for municipalities having populations between 3,000 and 4,000 to extend water or sewer disposal facilities beyond city limits.

 Any municipal corporation in this State having a population of between three thousand and four thousand based upon the latest United States census is hereby authorized and empowered, through action of its town council, to extend its water or sewer disposal facilities, any one or both, to any persons or corporations without the corporate limits of such municipality and to enter into contracts with such persons or corporations, or both, for the furnishing of water or sewage disposal facilities, any one or both, upon such terms, rates and charges as may be fixed by town council, either for domestic or industrial purposes, or both, when in the judgment of the town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than ten years but any such contract may be renewed from time to time for successive periods of ten years.

HISTORY: 1962 Code Section 59‑540; 1957 (50) 525; 1965 (54) 575.

CROSS REFERENCES

Excavation by municipality in or across road in connection with municipally owned waterworks or sewerage outside its limits, see Section 57‑7‑70.

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

Attorney General’s Opinions

Neither Article VIII, Section 13(D) of State Constitution nor Section 4‑1‑170 requires that school districts receive fees from jointly developed industrial parks at same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions. 1990 Op Atty Gen No. 90‑29.

Municipality may agree to sell utility services to industrial park in adjacent county provided such agreement is in accordance with applicable provisions of Sections 5‑31‑1510, et seq., 5‑31‑17, et seq. and 5‑31‑1910, et seq. Park serviced by agreement would not qualify as jointly developed industrial park under Article VIII, Section 13(D) of State Constitution. 1990 Op Atty Gen No. 90‑29.

Five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from exemption by other statutory authority. 1990 Op Atty Gen No. 90‑29.

Lawful contract by county officials will normally be sustained by court regardless of fact such officials may have made bad bargain. 1990 Op Atty Gen No. 90‑29.

**SECTION 5‑31‑1720.** Assessments for costs of extensions.

 Any municipality, as provided in Section 5‑31‑1710, may provide by ordinance for the payment of the costs of extending its water or sewer system, any one or both, to any property owner by assessments as herein provided.

HISTORY: 1962 Code Section 59‑540.1; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1730.** Assessment book.

 Assessments shall be entered in an assessment book, to be entitled “water and sewer assessment liens for the town of \_\_\_\_\_\_\_\_\_\_,” and shall state the names of the owners, the location of the property, the amount of the assessment and the time or times of payment, and such assessment book shall be furnished by the municipality and kept in the office of the clerk of the court for the county in which such municipality is located.

HISTORY: 1962 Code Section 59‑540.2; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1740.** Lien of assessments.

 The assessments so laid shall constitute a lien upon the property so assessed which shall be superior to all other liens except the liens for county and State taxes, and payment may be enforced as the payment of city or town taxes is enforced. Such lien shall continue from the date of entry on the “water and sewer assessment liens” book until the expiration of five years from the date when final payment is due and payable, unless sooner paid.

HISTORY: 1962 Code Section 59‑540.3; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1750.** Effect of default in payment of installment.

 Upon default in the payment of any installment or deferred portion of any assessment, at the time and in accordance with the terms and conditions fixed by ordinance, the total amount of such assessment then unpaid, including deferred installments or payments and interest, shall immediately become due and collectible, at the option of the municipality, and shall be collectible as city or town taxes are collected, with such penalties and costs as are provided for the payment of such taxes.

HISTORY: 1962 Code Section 59‑540.4; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1760.** Entry of satisfaction of assessments.

 The municipality shall require the town clerk to make entry of satisfaction on the water and sewer assessment liens book as soon as full payment is made, and the lien shall be thereby extinguished, and the municipality shall adopt a suitable ordinance to require this duty of the clerk.

HISTORY: 1962 Code Section 59‑540.5; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1770.** Deposit and use of receipts.

 The amounts of money raised by such assessments shall constitute and be kept as a separate fund, to be used for the purpose for which the money was raised.

HISTORY: 1962 Code Section 59‑540.6; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1780.** Certificates of indebtedness against assessments.

 The town council of any municipality as provided in this article may issue certificates of indebtedness showing the amounts of money due to such municipality by property owners as deferred payments or installments upon such assessments and may sell any such certificates of indebtedness or borrow money by pledging any of them as collateral security for the payment of such debt or debts, and, in the event of either a sale or collateral pledge of such certificates, or any of them, may pledge the faith and credit of such municipality for the payment thereof and guarantee the payment thereof for and in the name of such city or town. In any such case it shall not be necessary for a separate certificate of indebtedness to be issued showing the amount due from each property owner, but such certificates may be issued in denominations of one hundred dollars, or any multiple thereof. Nor shall it be necessary for the maturities of such certificates of indebtedness to correspond exactly to the maturities of such deferred payments or installments of the assessments and such certificates may be issued having fixed dates of maturities, but, in the event of payment of the assessments before the maturity of the certificates, the amount of such assessments so paid shall be placed in a sinking fund and held solely for the payment of the certificates of indebtedness issued against them.

HISTORY: 1962 Code Section 59‑540.7; 1957 (50) 525.

LIBRARY REFERENCES

Municipal Corporations 712(6).

Waters and Water Courses 202.

Westlaw Key Number Searches: 268k712(6); 405k202.

C.J.S. Municipal Corporations Sections 1537 to 1538.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

ARTICLE 19

Contracts for Service Within and Without City Limits

Editor’s Note

Certain limitations on the performance of municipal services outside of corporate limits are prescribed in Chapter 7 of this Title. Articles 15 through 19 of Chapter 31 should be construed with Chapter 7 to understand the applicable limitations.

**SECTION 5‑31‑1910.** Authorization for cities and towns to furnish water and electric current beyond corporate limits.

 Any city or town in this State owning a water or light plant may, through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.

HISTORY: 1962 Code Section 59‑531; 1952 Code Section 59‑531; 1942 Code Section 7300; 1932 Code Section 7300; Civ. C. ‘22 Section 4448; Civ. C. ‘12 Section 3025; 1907 (25) 625; 1904 (24) 403; 1934 (38) 1206; 1936 (39) 1583; 1948 (45) 1842.

CROSS REFERENCES

Excavation by municipality in or across road in connection with municipally owned waterworks or sewerage system outside its limits, see Section 57‑7‑70.

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 202.

Westlaw Key Number Searches: 145k1.5; 405k202.

C.J.S. Electricity Section 6.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

Attorney General’s Opinions

The Legislature intended for water districts to have discretion as to how to meet their residents’ water needs. S.C. Op.Atty.Gen. (June 16, 2011) 2011 WL 2648714.

Municipality may agree to sell utility services to industrial park in adjacent county provided such agreement is in accordance with applicable provisions of Sections 5‑31‑1510, et seq., 5‑31‑17, et seq. and 5‑31‑1910, et seq. Park serviced by agreement would not qualify as jointly developed industrial park under Article VIII, Section 13(D) of State Constitution. 1990 Op Atty Gen, No. 90‑29.

Neither Article VIII, Section 13(D) of State Constitution nor Section 4‑1‑170 requires that school districts receive fees from jointly developed industrial parks at same percentage as general taxes are to school taxes. Such, however, may be required by other statutory provisions. 1990 Op Atty Gen, No. 90‑29.

Five year property tax exemption for new or expanded manufacturing establishments applies to manufacturing establishments in jointly developed industrial parks unless such developments are specifically excluded from exemption by other statutory authority. 1990 Op Atty Gen, No. 90‑29.

Lawful contract by county officials will normally be sustained by court regardless of fact such officials may have made bad bargain. 1990 Op Atty Gen, No. 90‑29.

A nonresident purchaser of water from a municipality has only those rights set forth or necessarily implied from the contract to sell and furnish water and the nonresident has no rights beyond the contract. 1975‑76 Op Atty Gen, No 4246, p 43.

South Carolina Const, Art 8, Section 5 does not override this section [Code 1962 Section 59‑531]. ‑ South Carolina Const, Art 8, Section 5 is not an independent grant of power to cities and towns which would override the mandate of this section [Code 1962 Section 59‑531]. 1965‑66 Op Atty Gen, No 2099, p 203.

But it may not furnish water to noncontiguous areas. A municipality may not furnish water to persons residing outside the corporate limits when such areas are noncontiguous thereto. 1965‑66 Op Atty Gen, No 2099, p 203.

City’s water lines may be extended to contiguous outlying districts. Op Atty Gen, Feb. 25, 1963.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

The act creating the Greater Gaffney Metropolitan Utilities Area violates S. C. Const., Art. 8, Section 1 (now Art 8, Section 9), since under the act the right to contract with outside customers for water given by this section [Code 1962 Section 59‑531] to all municipalities is denied to the city of Gaffney. Sossamon v. Greater Gaffney Metropolitan Utilities Area (S.C. 1960) 236 S.C. 173, 113 S.E.2d 534.

2. In general

City had sufficient ownership interest in water plant, under water‑supply statute, to allow it to charge non‑residents a contractually‑agreed rate for water from that plant, although it did not own plant, where city, as charter participant in plant construction project, agreed to purchase project capacity and bore cost according to its allotted capacity. Sloan v. City of Conway (S.C. 2001) 347 S.C. 324, 555 S.E.2d 684, rehearing denied. Water Law 2134

The city did not violate the South Carolina Trade Practices Act, Sections 39‑5‑10 et seq. nor did it breach its contract for the supply of water with the plaintiffs in charging plaintiffs more for water than it charged residents within the corporate limits, because the city council set the water rates to be charged and it was undisputed that the rate charged non‑residents was more than that charged residents. Calcaterra v. City of Columbia (S.C.App. 1993) 315 S.C. 196, 432 S.E.2d 498.

This section [Code 1962 Section 59‑531] imposes no duty on a city to sell its surplus water to those living outside its corporate limits; it may choose not to do so. Sossamon v. Greater Gaffney Metropolitan Utilities Area (S.C. 1960) 236 S.C. 173, 113 S.E.2d 534.

Furnishing of water and electricity for use without corporate limits of municipality is “governmental function” of municipality. Looper v. City of Easley (S.C. 1934) 172 S.C. 11, 172 S.E. 705. Municipal Corporations 733(4)

City is not liable for damages to property contiguous to city from fire caused by lightning which came over city’s defective wires transmitting electricity. Even if city contracted to insure against fire, such contract is ultra vires. Looper v. City of Easley (S.C. 1934) 172 S.C. 11, 172 S.E. 705. Municipal Corporations 733(3)

For additional related case, as to allegations in proceeding for injunction to prevent violation of section [Code 1962 Section 59‑531], see Paris Mountain Water Co. v. City of Greenville (S.C. 1918) 110 S.C. 36, 96 S.E. 545.

No duties to nonresidents are imposed. This section [Code 1962 Section 59‑531] and other related sections do not impose on municipality duties of public service corporations as to nonresidents. Childs v. City of Columbia (S.C. 1911) 87 S.C. 566, 70 S.E. 296.

**SECTION 5‑31‑1920.** Special provision for cities over 70,000, 1940 census.

 The limitation of two years imposed by Section 5‑31‑1910 shall not apply to cities having a population of over seventy thousand according to the 1940 United States census, and such cities may enter into a contract as set forth in said section with persons, other cities, towns, public service commissions or political subdivisions without the corporate limits of the city, whether contiguous to the corporate limits or not, either for lighting or manufacturing or any other purposes, for any period or periods not exceeding fifty years, and such contracts may include options for extending the existence thereof beyond the date of their expiration for any additional period or periods, not exceeding fifty years, and for similar extensions beyond the date of any such extended period or periods.

HISTORY: 1962 Code Section 59‑532; 1952 Code Section 59‑532; 1942 Code Section 7300; 1932 Code Section 7300; Civ. C. ‘22 Section 4448; Civ. C. ‘12 Section 3025; 1907 (25) 625; 1904 (24) 403; 1934 (38) 1206; 1936 (39) 1583; 1948 (45) 1842; 1950 (46) 2261.

CROSS REFERENCES

Excavation in or across road in connection with municipally owned waterworks or sewerage system outside its limits, see Section 57‑7‑70.

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 202.

Westlaw Key Number Searches: 145k1.5; 405k202.

C.J.S. Electricity Section 6.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

**SECTION 5‑31‑1930.** Special provision for cities of 50,000 to 60,000, 1950 census.

 The limitations imposed by Section 5‑31‑1910 shall not apply to cities having a population of over fifty thousand and not more than sixty thousand as shown by United States Government census of 1950. Such cities may contract as set forth in said section with persons or other cities or towns, public service commissions or other political subdivisions without the corporate limits of the city, whether contiguous to the corporate limits or not, and may contract for a period not exceeding twenty‑five years.

HISTORY: 1962 Code Section 59‑533; 1952 Code Section 59‑533; 1942 Code Section 7300; 1932 Code Section 7300; Civ. C. ‘22 Section 4448; Civ. C. ‘12 Section 3025; 1907 (25) 625; 1904 (24) 403; 1934 (38) 1206; 1936 (39) 1583; 1948 (45) 1842; 1951 (47) 143.

CROSS REFERENCES

Excavation in or across road in connection with municipally owned waterworks or sewerage system outside its limits, see Section 57‑7‑70.

Performance of functions by municipality outside its corporate limits, see Section 5‑7‑60.

LIBRARY REFERENCES

Electricity 1.5.

Waters and Water Courses 202.

Westlaw Key Number Searches: 145k1.5; 405k202.

C.J.S. Electricity Section 6.

C.J.S. Waters Sections 616, 640, 643, 646, 651, 656, 659 to 665.

ARTICLE 21

Additional Powers of Municipalities as to Sewage Collection and Disposal

**SECTION 5‑31‑2010.** Declaration of legislative findings and intent.

 The General Assembly takes note of the fact that incorporated cities and towns (municipalities) throughout the State have in many instances experienced considerable growth with the result that sewage collection and treatment facilities must be extended and enlarged in order to serve all of the persons residing within the corporate limits. Such extensions and enlargements are customarily paid from ad valorem taxes levied throughout the municipality and from sewer service charges. However, it appears that in some instances the cost of constructing all or a portion of such facilities can be more equitably distributed by assessing all or a portion of the cost of constructing sewer laterals against the properties facing thereon.

 The General Assembly concludes that in order to facilitate the construction and operation of sewer systems by municipalities, all municipalities should be granted all of the powers set forth in this article.

 In view of the foregoing, the General Assembly has determined to confirm in the governing body of each municipality the power: (1) To place into effect, revise, enforce, and collect a schedule of charges for its sewage collection service and (2) to adopt and enforce regulations requiring all properties to which sewer service is available to connect to the municipality’s sewage collection facilities as now existing or hereafter improved; and to give the governing body of each municipality in addition to those powers already vested in them, the power: (a) To contract with any public or private agency operating a water system for the collection of such sewer charges; (b) to make regulations generally with respect to the discharge of sewage and the use of privies, septic tanks and any other type of sewage facilities; (c) to impose front‑foot assessments against properties abutting the sewage collection laterals; and (d) to make unpaid sewer service charges a lien against the property served.

 It is the legislative intent of this article that it shall be deemed complementary and supplementary to existing laws relating to any municipalities and to add to the powers, functions and duties committed to the several governing bodies thereof in order that all municipalities may fulfill their function of preserving the public health, and provide for all those who own, use or occupy dwellings, commercial buildings or other structures therein. In enacting this article, the General Assembly exercises its general police powers having found that such exercise was necessary for the maintenance and preservation of the health of the inhabitants of the State. Nothing herein contained shall be construed to be in derogation of the powers of the Department of Health and Environmental Control.

HISTORY: 1962 Code Section 59‑501; 1965 (54) 614.

CROSS REFERENCES

Contracts between municipalities and water companies to disconnect water service for nonpayment of sewer charges, see Section 58‑7‑40.

LIBRARY REFERENCES

Municipal Corporations 417(1).

Westlaw Key Number Search: 268k417(1).

C.J.S. Municipal Corporations Sections 1146 to 1147.

Attorney General’s Opinions

Commissioners of public works are not a “water distributing agency” under this article with which a city must contract on mutually agreeable terms concerning the collection of sewer service charges imposed by the city; the city is empowered by this article to require the commissioners to collect said charges. 1967‑68 Op Atty Gen, No 2467, p 133.

**SECTION 5‑31‑2020.** Definitions.

 For all purposes of this article:

 (a) The term “municipality” shall mean any incorporated city or town now or hereafter existing;

 (b) The term “council” shall mean the governing body of any municipality as now or hereafter constituted;

 (c) The term “water distribution agency” shall mean any public or private agency operating a water distribution system within any municipality or any portion thereof;

 (d) The term “sewage” shall mean domestic or industrial waste requiring collection, disposal and treatment;

 (e) The term “sewer service charge” shall mean the monthly, quarterly or annual charge imposed by any municipality for the collection, treatment and disposal of sewage irrespective of whether the same shall be collected by a water distribution agency or whether it shall be assessed against the property served as provided by Section 5‑31‑2030;

 (f) The term “sewer connection charge” shall mean the charge imposed upon property owners as a condition to authorizing them to connect to and discharge sewage into any public sewer system; and

 (g) The term “front‑foot assessment” shall mean the assessment levied to reimburse a municipality for that portion of the cost of installing sewer laterals (collection lines) imposed by the council on a front‑foot basis.

HISTORY: 1962 Code Section 59‑502; 1965 (54) 614.

**SECTION 5‑31‑2030.** Powers of municipalities enumerated.

 Each council is empowered by ordinance duly adopted:

 (1) To place into effect and revise whenever it so wishes or may be required a schedule of sewer service and sewer connection charges for the use of and connection to any sewage disposal system which it may operate. Prior to the furnishing of any sewage disposal service for which the prescribed sewer service charge shall, pursuant to Section 5‑31‑2040, become a lien on the property affected and prior to any subsequent increase in any such sewer service charge, not less than ten days’ written notice shall be given to each affected property owner notifying him of the nature and quantum of the sewer service charge and providing such property owner an opportunity if desired and requested, to appear and be heard in person or by counsel before the council. Following such hearing, if such be requested and held, action shall be taken by the council and notice of its decision shall be given to the property owner concerned or to his counsel, as the case may be, not less than ten days prior to the effective date of the sewer service charge. Any property owner aggrieved by the action of the council may proceed by certiorari in the court of common pleas for the county in which the property affected or any part thereof lies to have such court review the action taken by the council, at which time the court will determine the validity and reasonableness of the sewer service charge so made. Sewer service charges not intended to become liens in the case of nonpayment can be imposed and subsequently increased upon any user in the municipality without such notice and hearing.

 (2) To enter into contracts with any water distribution agency upon terms and conditions to be mutually agreed upon by which the council shall constitute the water collection agency the agent of the council, for the purpose of collecting such sewer service charges as the council shall from time to time impose upon those who utilize its sewage disposal facilities and shall empower the water collection agency as such agent to disconnect water service upon failure of any user to pay such sewer service charges.

 (3) To prescribe and enforce regulations (a) requiring persons who shall be residents of the municipality to make use of any sewer system which the municipality shall from time to time operate; and (b) generally with respect to the discharge of sewage and the use of privies, septic tanks and other sewage facilities within the municipality.

 (4) To provide that the actual cost of the establishment and construction of any sewer lateral collection lines hereafter constructed by the municipality and any extensions thereof within the municipality, or so much of the actual cost thereof as the council in its discretion deems appropriate, shall be assessed subject to the provision of the succeeding paragraph, upon the lots and parcels of land abutting directly on such lateral lines or extensions thereof according to the extent of the respective frontage thereon, by an equal rate per foot of such frontage; but the council may, in its discretion, provide, in the instance of corner lots, for an assessment deemed to be equitable. The council may provide in such resolution that the front‑foot assessments to be levied in connection with such installations may be paid in equal installments covering a period of not exceeding ten years. Such deferred payments shall be payable annually within the period that county taxes are payable and late payments shall be penalized to the same extent as in the case of county taxes. The General Assembly does not intend through this article to permit assessments against abutting property where no benefit will result to such property or where any such benefit would result only at some remote future time. Accordingly, no council shall, pursuant to this article, impose any front‑foot assessment against any property unless the assessment is being used for or is devoted to commercial or residential purposes at the time of the assessment or unless, in the case of properties on which no buildings shall be situate, such properties shall have been platted or otherwise developed as a part of a subdivision devoted to residential or commercial purposes; if any such property, which pursuant to the provisions of this paragraph is exempt from front‑foot assessment at the time the assessment is originally levied, is later converted to commercial or residential purposes or is later platted or otherwise developed then at such time front‑foot assessments may be levied against such property. No individual parcel shall be assessed on the basis of more than two hundred fifty feet of frontage.

 In connection with the imposition of such front‑foot assessments:

 (a) The ordinance providing for such front‑foot assessments shall designate by a general description the improvement to be made and the street or parts thereof whereon the work is to be effected and the actual cost thereof and the amount of the cost to be assessed upon all abutting property subject to the provisions of the preceding paragraph and the terms and manner of payment. Such ordinance shall not become effective until at least seven days after it shall have been published in a newspaper of general circulation in the municipality. Such ordinance may incorporate by reference plats and engineering reports and other data on file in the council’s office provided that the place of filing and reasonable hours for inspection by interested persons are specified in the ordinance.

 (b) Upon the completion of the construction of any such sewer laterals or any extensions thereof the council shall compute and ascertain the total cost thereof and shall thereupon make an assessment of such total cost or so much thereof as it deems appropriate. For that purpose the council shall make out an assessment roll in which must be entered the names of the persons assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed.

 (c) Immediately after such assessment roll has been completed, the council shall forthwith cause one copy thereof to be deposited in the council’s office for inspection by interested parties, and shall cause to be published at least once in a newspaper of general circulation within the municipality a notice of completion of the assessment roll setting forth a description in general terms of the improvements and the time fixed for the meeting of the council for a hearing of objections in respect of the front‑foot assessments; such meeting not to be earlier than ten days from the date of the publication of such notice.

 (d) As soon as practicable after the completion of the assessment roll and prior to the publication of the notice above‑mentioned in subparagraph (c) the council shall mail to the owner or owners of each lot or parcel of land against which a front‑foot assessment is to be levied at his or their address, if any, appearing on the records of the treasurer of the municipality, a notice stating the nature of the improvement, the total cost thereof, the amount to be assessed against the particular property and the frontage in feet upon which the front‑foot assessment is based, together with the terms and conditions upon which the front‑foot assessment may be paid. This notice shall also contain a brief description of the particular property involved together with a statement that the amount assessed shall constitute a lien against the property superior to all other liens except property taxes. The notice shall also state the time and place fixed for the meeting of the council above‑mentioned for a hearing of objections in respect of the front‑foot assessments. Any property owner who fails, not later than three days prior to the date set for such meeting, to file with the council a written objection to the front‑foot assessments against his property shall be deemed to have waived all rights to object to such front‑foot assessment; and the notice prescribed herein shall so state.

 (e) At the time and place specified for the meeting above‑mentioned, or at some other time to which it may adjourn, the council shall hear the objections of all persons who have filed written notice of objection within the time prescribed above who may appear and make proof in relation thereto either in person or by their attorney. The council may thereupon make such corrections in the assessment roll as it may deem proper, confirm the same, set it aside and provide for a new assessment. Whenever the council shall confirm an assessment roll, either as originally prepared or as thereafter corrected, a copy thereof certified by the secretary of the council shall forthwith be filed in the office of the clerk of court of common pleas of each county in which any property lies, and against which any front‑foot assessments have been levied; from the time of such filing the front‑foot assessments impressed in the assessment roll shall constitute and be a lien on the real property against which the same are assessed superior to all other liens and encumbrances except only the lien for property taxes.

 (f) After the assessment roll has been confirmed a certified copy thereof shall be delivered to the treasurer of such municipality in which any front‑foot assessments are levied thereby who shall prepare and keep a separate book or books in connection therewith and who shall proceed to collect the same in the manner of municipal taxes and shall remit such collections on or before April fifteenth of each year upon the direction of the council. Each year the treasurer of the municipality shall mail out notices of such front‑foot assessments at the same time county tax notices are mailed. Past due front‑foot assessments shall be turned over by the respective municipal treasurers to the sheriff or delinquent tax collector of the municipality who shall proceed to collect in the same manner as unpaid municipal taxes are collected. The collecting official shall likewise keep separate records in connection with such past due assessments and shall remit all sums collected forthwith upon the direction of the council.

 (g) Immediately upon the confirmation of an assessment the council shall mail a written notice to all persons who have filed written objections as hereinabove provided of the amount of the front‑foot assessment finally confirmed against his property. If any such person is dissatisfied with the amount of the front‑foot assessment so confirmed and shall within ten days after the mailing of the notice confirming the assessment to him may give written notice to the council of his intent to appeal his front‑foot assessment to the court of common pleas for the county in which his property is assessed, or any part thereof, is located, and shall within five days after giving such notice to the council serve upon the council a statement of facts upon which he bases his appeal; but no such appeal shall delay or stop the construction of the improvements or affect the validity of the front‑foot assessments confirmed and not appealed. The appeal shall be tried at the next term of court as other actions at law with priority over all other cases.

 (h) The council may correct, cancel or remit any such front‑foot assessment and may remit, cancel or adjust the interest or penalties of any front‑foot assessment and is empowered, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of any assessment made by it and thereupon to make a reassessment.

 (i) In the event the council provides that such front‑foot assessments may be paid in equal annual installments, then in that event the front‑foot assessment shall be deemed to be due and payable in the equal annual installments prescribed by the council and shall bear interest at the rate of four per cent per annum from the date of the confirmation of the assessment roll, payable with such annual installment. Any property owner shall have the right at any time in his option to prepay in full the front‑foot assessment against his property by the payment of the balance due plus interest calculated to the date of prepayment. If any property owner shall fail or neglect to pay any installment when the same becomes due and payable, then and in that event the council may, at its option, declare all of the installments remaining unpaid at once due and payable and such property shall be sold by the sheriff in the same manner and with the same right of redemption as are prescribed by law for the sale of land for unpaid property taxes.

 (j) All moneys realized from front‑foot assessments shall be kept in a separate and distinct fund either on deposit with the municipal treasurer or, in the discretion of the council, in a bank located within the county in which the municipality is located and used to defray the cost to the extent prescribed by the council in the ordinance providing for such front‑foot assessments of the establishing and construction of the sewage lateral collection lines in connection with which the front‑foot assessments were levied, or to provide debt service on bonds issued by the municipality to defray the costs of such construction; and for no other purpose. In the event a municipality issues bonds and uses only a portion of the proceeds thereof to defray all or a part of the cost of constructing sewer lateral collection lines, moneys derived from the front‑foot assessments shall be used to provide debt service to the extent prescribed in the ordinances providing for the imposition of the front‑foot assessments and authorizing the issuance of the bonds.

 (k) Moneys received by the council from front‑foot assessments and deposited by it as prescribed in the foregoing paragraph may to the extent practicable be invested in the discretion of the council in obligations of the United States of America, obligations of any agency of the United States of America or obligations guaranteed by any agency of the United States of America, maturing in such fashion as to provide cash moneys for the principal and interest payments of bonds payable therefrom when due. All income derived from any such investment shall be applied to the same purpose to which the invested funds are applicable.

 (l) Whenever moneys derived from the front‑foot assessments are deposited in a bank, the amount of such deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured by direct obligations of the United States or by obligations of an agency of the United States or by obligations guaranteed by an agency of the United States. Nothing herein shall be construed to prohibit the council from requiring such additional security as it may deem appropriate.

HISTORY: 1962 Code Section 59‑503; 1965 (54) 614; 1970 (56) 2577; 1971 (57) 83.

CROSS REFERENCES

Charges for legal advertisements in newspapers, see Sections 15‑29‑80 et seq.

Extension of water and sewer systems and assessments therefor, see Sections 5‑31‑1510 et seq.

Power of water companies to contract to disconnect water service for nonpayment of sewer charges, see Section 58‑7‑40.

LIBRARY REFERENCES

Municipal Corporations 417(1), 712(7).

Westlaw Key Number Searches: 268k417(1); 268k712(7).

C.J.S. Municipal Corporations Sections 1146 to 1147, 1538.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 5‑31‑2040.** Lien on real estate for sewer service charges; collection of past‑due charges.

 If the notice or notices prescribed by paragraph (1) of Section 5‑31‑2030 shall have been given and any hearing requested pursuant thereto shall have been held, all sewer service charges imposed by the council following that procedure under authority of this article and not paid when due and payable shall be and constitute a lien upon the real estate to which the sewage service concerned relates so long as the sewer service charges remain unpaid. In addition to such other rights and remedies as may be available to the council in law or in equity for the collection of the sewer service charges, the lien may be enforced by the council in the same manner and fashion as the lien of property taxes on real estate. The lien herein provided shall be superior to all other liens except liens for unpaid property taxes.

 The method provided in this article for the enforcement of the collection of past due sewer service charges shall not be the exclusive method of enforcing such collections and the council is fully empowered to enforce the collection of any such sewer service charges in any other lawful manner in all or any part of the municipality, including particularly by way of a contract with a water distribution agency as authorized under paragraph (2) of Section 5‑31‑2030.

HISTORY: 1962 Code Section 59‑504; 1965 (54) 614.

LIBRARY REFERENCES

Municipal Corporations 712(7).

Westlaw Key Number Search: 268k712(7).

C.J.S. Municipal Corporations Section 1538.

ARTICLE 23

Front‑foot or Per‑parcel Assessment for Sewer Improvements

**SECTION 5‑31‑2310.** “Political subdivision” defined.

 For the purposes of this article, “political subdivision” means a municipality, county, or special purpose district which operates a sewer system authorized by law.

HISTORY: 1992 Act No. 423, Section 1.

**SECTION 5‑31‑2320.** Authority to expend funds collected by front‑foot or per‑parcel assessments for sewer improvements.

 Notwithstanding any other provision of law, a political subdivision by resolution or ordinance duly adopted may provide for the expenditure of funds collected by way of front‑foot assessments or per‑parcel assessments for sewer improvements in accordance with this article.

HISTORY: 1992 Act No. 423, Section 2.

LIBRARY REFERENCES

Municipal Corporations 417(1).

Westlaw Key Number Search: 268k417(1).

C.J.S. Municipal Corporations Sections 1146 to 1147.

**SECTION 5‑31‑2330.** Application of funds to maintenance, repair and replacement of lines; conditions.

 In the event that a political subdivision, pursuant to special or general act, has collected funds by way of front‑foot assessments or per‑parcel assessments to defray the cost of construction of sewer collection lines, these funds may be applied by the political subdivision to the maintenance, repair, and replacement of the lines as long as the following conditions are satisfied:

 (1) the construction of all sewer collection lines for which the assessments were imposed and collected has been completed; and

 (2) any obligations issued to finance the construction of the sewer collection lines have been discharged.

HISTORY: 1992 Act No. 423, Section 3.

LIBRARY REFERENCES

Municipal Corporations 417(2).

Westlaw Key Number Search: 268k417(2).

C.J.S. Municipal Corporations Sections 1146 to 1147.

**SECTION 5‑31‑2340.** Requirements on political subdivision prior to expenditure of funds.

 Before the expenditure of funds in accordance with this article, the political subdivision first shall find by resolution or ordinance that the conditions set forth in Section 5‑31‑2330 are satisfied. The political subdivision also shall set forth in its resolution or ordinance a general description of the properties upon which the assessments were imposed and a general description of the use to which the funds shall be applied; however, the funds shall be applied only to maintenance, repair, or replacement of those sewer collection lines in connection with which the assessments were imposed.

HISTORY: 1992 Act No. 423, Section 4.

LIBRARY REFERENCES

Municipal Corporations 417(2).

Westlaw Key Number Search: 268k417(2).

C.J.S. Municipal Corporations Sections 1146 to 1147.

ARTICLE 25

Termination of Electric and Natural Gas Service Due to Nonpayment

**SECTION 5‑31‑2510.** Definitions.

 For purposes of this article:

 (1) “Licensed health care provider” means a licensed medical doctor, physician’s assistant, nurse practitioner, or advanced‑practice registered nurse.

 (2) “Special needs account customer” means the account of a residential customer:

 (a) when the customer can furnish to the municipality furnishing electricity or natural gas to its citizens a certificate on a form provided by the municipality and signed by a licensed health care provider that states that termination of electric or gas service would be dangerous to the health of the customer or a member of his household at the premises to which electric or natural gas service is rendered; or

 (b) who suffers from Alzheimer’s disease or dementia as certified by a licensed health care provider.

HISTORY: 2006 Act No. 313, Section 1, eff June 1, 2006; 2012 Act No. 122, Section 1, eff February 22, 2012.

Effect of Amendment

The 2012 amendment in subsection (2), added the subsection identifiers, added subsection (b) relating to Alzheimer’s disease, and made other nonsubstantive changes.

**SECTION 5‑31‑2520.** Termination procedures; contents.

 (A) Each municipality furnishing electricity or natural gas to its citizens must establish written procedures for termination of service due to nonpayment for a special needs account customer at any time and for all residential customers during weather conditions marked by extremely cold or hot temperatures. Each municipality must submit its procedures to the Office of Regulatory Staff by November 1, 2006. Any subsequent revisions must be submitted semiannually by March first or September first.

 (B) The procedures for termination must include the following:

 (1) notification procedures so that the customer is made aware of an impending termination and the time within which he must make arrangements for payment prior to termination;

 (2) arrangements for a payment arrangement plan to enable a residential customer, who has a satisfactory payment history as determined by the municipality, to pay by installments where the customer is unable to pay the full amount due for electric service;

 (3) a procedure to advise customers who are unable to pay the full amount due or who are not approved for a payment arrangement plan that they may contact local social service agencies to determine the availability of public or private assistance with the payment of electric bills;

 (4) a schedule of termination that takes into account the availability of the acceptance of payment and the reconnection of service; and

 (5) the standards for determining weather conditions marked by extremely cold or hot temperatures.

HISTORY: 2006 Act No. 313, Section 1, eff June 1, 2006.

**SECTION 5‑31‑2530.** Third party notification program.

 Each municipality furnishing electricity or natural gas to its citizens must consider establishing and maintaining a third‑party notification program to allow a residential customer to designate a third party to be notified if the electric or natural gas service is scheduled for termination.

HISTORY: 2006 Act No. 313, Section 1, eff June 1, 2006.

**SECTION 5‑31‑2540.** Disconnection when public safety emergency exists.

 Notwithstanding another provision of this article, a municipality furnishing electricity or natural gas to its citizens may disconnect a customer when it is determined that a public safety emergency exists.

HISTORY: 2006 Act No. 313, Section 1, eff June 1, 2006.

**SECTION 5‑31‑2550.** Right of action; duty of care.

 This article does not create a new private right of action or a new duty of care. This article does not diminish, increase, affect, or evidence any duty of care existing under the laws of this State prior to the effective date of this article.

HISTORY: 2006 Act No. 313, Section 1, eff June 1, 2006.