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Opinion No. 02-048

Multi-County Utility District Water Tap Policy

QUESTIONS

1. Is a multi-county water utility district authorized to remove or declare forfeited a water tap from the premises of a customer who is delinquent in paying the water bill?

2. Is a multi-county water utility district authorized to charge a tap fee to a new applicant for water service at a location where a water tap was previously installed, but forfeited and removed because a previous customer failed to pay the water bill or, in the alternative, to charge the arrearage on the previous customer's bill?

3. Is a multi-county water utility district authorized to require a new customer to pay a new water tap fee at a location where a tap has been forfeited procedurally but has not physically been removed from the ground?

OPINIONS

State law generally authorizes a utility district to collect "reasonable" charges for its services and to prescribe penalties for nonpayment. The described measures are subject to review to determine whether, in light of all relevant facts and circumstances, they are reasonable.

1. Depending on facts and circumstances, including practices among other utilities, costs of reconnecting, and past problems the district may have had in collecting water service fees, a reviewing court or agency could decide that actually removing a tap from a property for non-payment is not reasonable because the same purpose could be accomplished by simply cutting off water service.

2. Similarly, based on facts and circumstances, a reviewing court or agency could decide that charging a reconnecting fee to a new customer where a tap has been removed or allowing a new customer to receive service only if the customer pays the delinquent water bills of the previous customer is not reasonable or is not authorized because it imposes on the new customer the debts of another party without statutory authority.

3. Based on facts and circumstances, a reviewing court or agency could decide that charging a reconnecting fee to a new customer where a tap has not been actually removed is not reasonable because it is not related to the actual cost of providing the service.

ANALYSIS

This opinion concerns the authority of a multi-county water utility district to impose various penalties for failure to pay a water bill. The request refers to both state and federal law. As a general matter, this Office does not issue opinions regarding federal statutory law. If the district has borrowed or received a grant of funds from a federal agency, then the district should consult the terms of any agreement or federal law under which it received the funds, as well as the federal agency that supervises the loan or the grant.

The request asks about certain practices of a multi-county water utility district. The following summary is based solely on the material included with the request, which does not include a copy of the actual policy adopted by the district. If a customer fails to pay the water bill, after procedural time limits and notice, the district locks the customer's water meter and then, after some time, declares the customer's tap forfeited. The district may or may not physically remove the meter and disconnect the tap once the customer's tap is forfeited. The delinquent customer may not receive a new tap at any location until the outstanding bill is paid. A new customer may obtain a tap in two ways: first, the customer may transfer a tap that is in good standing at the customer's location; second, the customer may purchase a new tap. Where a new customer wishes to obtain service at a location where the prior customer's tap has been forfeited, the district allows the customer a choice between paying a new tap fee or paying the unpaid water bill of a prior customer.

Utility districts are established and operate under Tenn. Code Ann. §§ 7-82-101, *et seq.* Utility districts embracing territory in two or more counties may be created under Tenn. Code Ann. §§ 7-82-601, *et seq.* A utility district is generally authorized to fix, maintain, collect and revise rates and charges for any service. Tenn. Code Ann. § 7-82-304(6). The utility district law also provides:

> Any district created pursuant to the provisions of this chapter shall be vested with *all the powers necessary and requisite for the accomplishment of the purpose for which such district is created, capable of being delegated by the general assembly.* No enumeration of particular powers herein created shall be construed to impair or limit any general grant of power herein contained nor to limit any such grant to a power or powers of the same class or classes as those enumerated. *The district is empowered to do all acts necessary, proper or convenient in the exercise of the powers granted herein.*

Tenn. Code Ann. § 7-82-306 (emphasis added). Under Tenn. Code Ann. § 7-82-403(a), with a few exceptions that appear to be inapplicable in this case:

> . . . the board of commissioners of any district shall prescribe and collect *reasonable* rates, fees, tolls, or charges for the services, facilities and commodities of its system or systems, *shall prescribe penalties for the nonpayment thereof*, and shall revise such rates, fees, tolls or charges from time to time whenever necessary to ensure that such system or systems shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will always produce revenue at least sufficient to:
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> (1) Provide for all expenses of operation and maintenance of the system or systems, including reserves therefor; and
>
> (2) Pay when due all bonds and interest thereon for the payment of which such revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor.

Thus, a utility district is authorized to charge "reasonable" rates and prescribe penalties for nonpayment of utility charges. The Tennessee Court of Appeals has also recognized that the common law requires a municipal water service to impose rates that are "fair and reasonable in view of the existing conditions." *City of Parsons v. Perryville Utility District*, 594 S.W.2d 401, 406 (Tenn. Ct. App. 1979), *p.t.a. denied* (1980).

We note that a customer of a utility district may request the Utility Management Review Board to review a decision by the board of commissioners regarding complaints concerning services provided and charges for services. Tenn. Rules and Regulations Ch. 1200-22-7-.05(3)(c). Judicial review of a decision by the Utility Management Review Board is by common law certiorari within the county of the utility district's principal office. *Id.* The scope of review under the common law writ is whether the board or tribunal has exceeded its jurisdiction or is acting illegally, fraudulently or arbitrarily. *Powell v. Parole Eligibility Review Board*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994), *p.t.a. denied* (1994). Under all the governing authorities, therefore, it appears that the utility district's penalty provisions would be valid so long as they are reasonable in view of all the relevant facts and circumstances.

1. Physically Removing a Water Tap for Non-Payment

The first question is whether a utility district may validly adopt a policy providing that the district will physically remove the water tap from a customer's property if the customer fails to pay the water bill. The Tennessee Supreme Court has concluded that a water service may refuse to furnish water to customers who have not paid their bills. *Jones v. Nashville*, 109 Tenn. 550, 72 S.W. 985 (1902); *Patterson v. City*

of Chattanooga, 192 Tenn. 267, 241 S.W.2d 291 (1951). But no available case addresses whether a public utility may physically remove a water tap from a property for failure to pay the water bill. Whether this practice is reasonable would depend on all the relevant facts and circumstances, including whether this practice is common among public utilities, costs of reconnecting, and past problems the district may have had in collecting water service fees. A reviewing agency or court could conclude that this practice is unreasonable because the district could accomplish the same purpose by turning off the water service rather than physically removing a tap.

2. Reconnecting Fee for New Customers Where Tap Has Been Removed

The next question is whether a utility district may validly adopt a policy requiring a new customer at a property where a tap has been removed (because the previous customer failed to pay the bill) to pay a new reconnecting fee or to pay the previous customer's arrearage. Again, this practice would be subject to review to determine whether, in light of all facts and circumstances, it is reasonable. In effect, this practice makes a new customer responsible for the outstanding bills of the previous customer. No statute authorizes this practice. Generally, a municipality may refuse service to a subsequent customer until he or she pays the unpaid charges of the prior tenant or owner only if the municipality is expressly authorized to impose a lien on property for delinquent service charges. McQuillin, *Law of Municipal Corporations* § 35.35.20 (3d Ed. 1995). Under Tenn. Code Ann. § 7-82-312, a utility district may obtain a property lien for fees or assessments for sewer or wastewater disposal utility services, but the statute does not authorize a lien for water service charges. A reviewing agency or court could conclude that this practice, to the extent it makes a subsequent customer liable for service provided to another party, is beyond the district's statutory authority.

3. Charging a Tap Fee Where a Tap Has Not Been Physically Removed

The last question is whether a utility district may validly adopt a policy requiring a new customer at a property where a previous customer's service was terminated to pay a new tap fee even if the tap is still physically on the property. Again, whether this policy is reasonable depends on all the relevant facts and circumstances, particularly whether the new tap fee is reasonably related to the actual cost of resuming service in these circumstances. A reviewing agency or court could decide that charging a reconnecting fee to a new customer where a tap has not been actually removed is not reasonable because it is not related to the actual cost of providing the service.

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