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Opinion No. 02-051

Authority of Utility District to Charge Fee When Sewer Service is Available But Not Connected

QUESTION

Does a utility district created under the Utility District Law of 1937, Tenn. Code Ann. §§ 7-82-101, *et seq.*, have the authority to charge a sewer fee to a property owner to whom it makes sewer service available, although the property owner is not connected?

OPINION

Yes.

ANALYSIS

You have asked whether a utility district that was created under the Utility District Law of 1937, Tenn. Code Ann. §§ 7-82-101, *et seq.*, may validly charge a sewer fee when it makes sewer service available, but the property owner has not connected to the sewer. The opinion request states that the utility district in question allows customers who have a functioning septic system to forego actual connection to the district's sanitary sewer system when it first becomes available to the customer. In such cases, however, the customer is assessed a minimum sewer bill because the system is available to the property. According to the request, the utility district states it is serving its customers by not requiring them to incur tap-on fees if their septic systems are properly functioning, while raising sufficient revenues to service the district's bonded indebtedness on the sewer system made available to the customers. Some of the customers, however, believe the charge is unfair and unlawful because they are being assessed a sewer fee when no sewer service is provided.

A similar situation arose in the unreported case of *Phillips v. Metro*, No. 01-A-01-9105CH00163, slip op. (M.S. Tenn. Ct. App. Oct. 11, 1991), 1991 WL 202479. In the *Phillips* case, the Court concluded that the Metropolitan Government of Nashville and Davidson County was authorized to charge a sewer fee when the sewer service was available for the consumer's use, even though the consumer was not actually using the service. The Court relied principally on a statute providing that local governments "shall have the power and authority to fix and collect fees 'or other charges for the use of or

in connection with any public works project.'" 1991 WL 202479 at *2, quoting Tenn. Code Ann. § 9-21-107(8).

Similarly, the Utility District Law provides that a district's Board of Commissioners "shall prescribe and collect reasonable rates, fees, tolls, or charges for the services, facilities and commodities of its system or systems . . .." Tenn. Code Ann. § 7-82-403(a). The statute does not limit the utility district to charging a user fee. Thus, it is our opinion that a utility district operating under the Utility District Law of 1937 may lawfully charge a sewer fee to persons to whom it makes sewer service available, even though such persons are not connected to the sewer system. *See generally Horton v. Carroll County*, 968 S.W.2d 841 (Tenn. Ct. App. 1997), *p.t.a. denied* (1998) (county could charge for furnishing garbage pick-up service to residents who declined the service).

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