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STATE OF ALABAMA

SEP 25 1989

89-00440

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Municipalities - Utilities -  
Municipal Ordinances and  
Resolutions - Water and Sewer  
Boards

The Utilities Board of Daphne, through its rules and regulations, may charge residents a monthly sewer service fee even if the residents have not connected to the system as required but may not discontinue water service to those residents who have not connected. If the resident refuses to pay the charge or connect to the system, the board's remedy is to seek enforcement through the courts.

Dear Mr. Pearson:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Does the Resolution No. 1986-2 and the powers contained therein allow the Utilities Board of the City of Daphne to charge a monthly sewer service charge to residents of Daphne even though they have failed to hookup to the sewer system provided?
2. Does the Utilities Board of the City of Daphne have the authority to enforce the

mandatory hookup requirements by discontinuing water service to citizens if they fail to connect to the sewer system as provided by the Utilities Board of the City of Daphne?

3. If a resident fails to connect to the sewer system provided after reasonable notice from the Utilities Board of the City of Daphne, what methods of enforcing the connection requirement is available to the Utilities Board?

#### FACTS AND ANALYSIS

Your request states that the Utilities Board of the City of Daphne is incorporated pursuant to Code of Alabama 1975, §§ 11-50-310, et seq. Section 11-50-314(8) authorizes the board to:

" . . . establish and collect and alter charges for water, gas, electric and sewer services and all services of any kind sold or furnished by it; . . . "

You also state that on July 14, 1986, the Utilities Board adopted Resolution No. 1986-2, which requires property owners within a certain distance to the public sewer system to connect to the sewer system.

In an opinion to Honorable Maurice Sherer, Chairman, Jasper Utilities Board, under date of April 19, 1985, we stated that a utility board incorporated pursuant to §§ 11-50-310, et seq., is a separate and distinct entity from the city it serves and, as such, it can only exercise those powers granted to it by statute. We have also stated that the board's powers are broad enough to allow the board to make reasonable rules and regulations by which customers must abide in order to continue to receive the services provided by the board. Opinion to Honorable Kenneth Couch, Chairman, Union Grove Utilities Board, under date of September 15, 1981.

It is our opinion that the rules and regulations of the utilities board may reasonably include a provision charging residents of the city a monthly sewer service fee even if the

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residents fail to connect to the sewer system as required. It would not be permissible, however, to discontinue water service to residents who fail to connect to the sewer system as this would be unreasonable. See opinion to Honorable Lynn Greer, State Representative, under date of May 8, 1980.

The remedies available to the utilities board for enforcing the connection requirement are limited by the powers granted to the board. Thus, the board may charge a fee for the sewer service even if the connection is not made, but if the resident refuses to pay or connect the board must resort to enforcement through the courts.

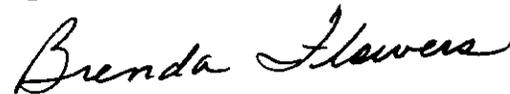
#### CONCLUSION

The Utilities Board of Daphne, through its rules and regulations, may charge residents a monthly sewer service fee even if the residents have not connected to the system as required but may not discontinue water service to those residents who have not connected. If the resident refuses to pay the charge or connect to the system, the board's remedy is to seek enforcement through the courts.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:



BRENDA FLOWERS  
Assistant Attorney General

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