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91-00031

STATE OF ALABAMA

OCT 23 1990

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Water and Sewer Boards - Water  
and Sewage - Fees - Litigation

Water Works and Sewer Board may  
bring a civil action to collect  
hook-on fees, delinquent  
monthly service charges, and  
accrued late fees without first  
charging a resident with a  
misdemeanor for failure to  
connect to the system.

Dear Mr. Marsh:

This opinion is issued in response to the request of the  
Water Works and Sewer Board of the Town of New Brockton for an  
opinion of the Attorney General.

QUESTION

May the Water Works and Sewer Board of the  
Town of New Brockton bring a civil action to  
collect hook-on fees, delinquent monthly  
service charges, and accrued late fees  
without first charging the resident with a  
misdemeanor for failure to hook up to the  
system?

FACTS AND ANALYSIS

Your request presents the following facts:

On June 16, 1987, the Town of New Brockton, Alabama, adopted and approved an ordinance regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer systems; and providing penalties for violations thereof, in the Town of New Brockton, County of Coffee, State of Alabama. A copy of the ordinance is enclosed for your review as Exhibit "A." Thereafter, on August 4, 1988, the Town of New Brockton by deed, bill of sale and assumption agreement conveyed all of its rights, title and interest in the sanitary sewer system of the Town to the Water Works and Sewer Board of the Town of New Brockton.

Subsequent to the adoption of the aforesaid ordinance, on September 25, 1987, the New Brockton Water Works Board provided each resident and/or property owner with notice that the sewer system for the Town had been completed, and that all buildings, both residential and business, would have a period of 90 days from September 25 to complete the connection to the system. A copy of the notice is attached hereto as Exhibit "B."

Subsequent to September 25, 1987, three residents have not hooked on to the system, and have been charged a hook-on fee, delinquent monthly service charges, and accrued late fees, which each resident has failed and refused to pay. The three residents claim that they are not connected to the Town's sewer system, and further claim that pursuant to said ordinance the Town may not bring a civil action to recover damages against each of them representing the sewer hook-on fee, delinquent monthly service charges and accrued late fees. Each

resident contends that as a condition precedent to the Town recovering monetary damages against each resident, the Town must first secure compliance under the ordinance by way of a misdemeanor conviction.

Furthermore, Article VIII of the Ordinance states:

"Sec. 1. Any person found to be violating any provision of this ordinance except Article VI shall be served by the Town with written notice stating the nature of the violation and provided a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

"Sec. 2. Any person who shall continue any violation beyond the time limit provided for in Article VIII, Section 1, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$200.00 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

"Sec. 3. Any person violating any provisions of this ordinance shall become liable to the Town for any expense, loss, or damage occasioned by the Town by reason of such violation."

Article I, Sec. 4 of this ordinance states:

"'Town' shall mean the TOWN OF NEW BROCKTON, ALABAMA and, unless clearly indicated otherwise by the context, includes also the Water Board of the Town of New Brockton."

Article VIII as set forth above provides the criminal penalties which may be imposed for violating the Ordinance. The imposition of criminal penalties in no way prohibits the Town or the Board from pursuing civil remedies available to it in the courts of the State of Alabama. Even if Sec. 1, Article VIII is construed as requiring notice before pursuing civil remedies, the burden of providing such notice has been met. (See Exhibit B bearing a date of September 25, 1987.)

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We know of no impediment to the Board's pursuit of civil remedies to collect fees mandated in the Ordinance.

CONCLUSION

It is the opinion of this office that the Water Works and Sewer Board of the Town of New Brockton may bring a civil action to collect hook-on fees, delinquent monthly service charges, and accrued late fees without first charging a resident with a misdemeanor for failure to connect to the system.

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

Sincerely,

DON SIEGELMAN  
Attorney General  
By:



CAROL JEAN SMITH  
Assistant Attorney General

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