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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Fred Rounsaville
Chairman
Dauphin Island Water, Sewer, and Fire
Protection Authority
Post Office Box 400
Dauphin Island, Alabama 36528

Water, Sewer & Fire Protection Authority
– Fees – Costs and Fees – Mobile County

The Dauphin Island Water, Sewer, and Fire Protection Authority (“Authority”) is authorized to revise its rates and assess consumers in a manner that the Authority deems to be reasonable given the particular circumstances.

Dear Mr. Rounsaville:

This opinion of the Attorney General is issued in response to your request on behalf of the Dauphin Island Water, Sewer, and Fire Protection Authority.

QUESTION

Must the Dauphin Island Water, Sewer, and Fire Protection Authority continue to share high maintenance and operational costs with all customers, or may it set higher rates, fees, or charges specific to these areas to compensate for the unusual maintenance and operational costs?

FACTS AND ANALYSIS

The Dauphin Island Water, Sewer, and Fire Protection Authority was established pursuant to section 11-88-1, *et seq.*, of the Code of Alabama. Section 11-88-7 sets forth the powers of such authorities. More specifically, section 11-88-7(a)(24) states as follows:

(24) *To fix and revise* from time to time reasonable *rates, fees and other charges* for water service, sewer service and fire protection service or any thereof furnished or to be furnished by any water system, sewer system or fire protection facility or portion of any thereof owned or operated by the authority and to collect all charges made by it.

ALA. CODE § 11-88-7(a)(24) (2008) (emphasis added). Further, section 11-88-12 also speaks to the fee that may be assessed by a water, sewer, and fire protection authority. This section states as follows.

(a) *Rates, fees and charges* for water service, sewer service and fire protection service rendered by the authority from any of its water systems, sewer systems or fire protection facilities *shall be so fixed and from time to time revised* as at all times to provide funds at least sufficient to:

(1) Pay the cost of operating, maintaining, repairing, replacing, extending and improving the systems and facilities, or either, from which such services are rendered;

(2) Pay the principal of and the interest on all bonds issued and obligations assumed by the authority that are payable out of the revenues derived from operation of those systems and facilities as the said principal and interest become due and payable;

(3) Create and maintain such reserves for the foregoing purposes or any of them as may be provided in any mortgage and deed of trust or trust indenture executed by the authority under this article or in any resolutions of the board authorizing the issuance of bonds, the assumption of any obligation, or the acquisition of any such system or facility; and

(4) Make such annual payments, if any, to the United States of America or any agency or instrumentality thereof, the state, municipalities, counties, departments, authorities, agencies and political subdivisions of the state and any public corporations organized under the laws of the state as the authority may have contracted to make.

(b) The provisions of subsection (a) of this section shall apply to any authority organized under this article for the purpose of constructing and operating a sewer system, either separately or in combination with a water system or fire protection facility or both.

ALA. CODE § 11-88-12 (2008) (emphasis added). These sections, when read together, have been interpreted as authorizing the Board to charge reasonable rates and other charges for the services it provides. Such charges should bear a reasonable relationship to the services provided to the customer. Opinion to Honorable William L. Nix, Attorney, Huguley Water, Sewer, and Fire Protection Authority, dated October 19, 2007, A.G. No. 2008-008 (stating that the Huguley Authority could charge varying rates for service as long as such charges are reasonable.); and opinion to Honorable Mary Sue Smith, Chairman, Board of Directors, Huguley Water and Fire Protection Authority, dated March 27, 1996, A.G. No. 96-00164. Based on the foregoing, it is the opinion of this Office that the Dauphin Island Water, Sewer, and Fire Protection Authority may revise its rates, fees, or charges and assess certain consumers higher rates, fees, or charges to cover the expense of providing the service that is due to the unusually high volume of maintenance and operational costs.

CONCLUSION

The Dauphin Island Water, Sewer, and Fire Protection Authority is authorized to revise its rates and assess consumers in a manner that the Authority deems to be reasonable given the particular circumstances.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division