2010-106

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

September 21, 2010

Honorable Jerry W. Brasseale
Mayor, City of Pleasant Grove
501 Park Road
Pleasant Grove, Alabama 35127

Solid Waste Disposal – Fees – Penalties – Municipalities – Public Records – Jefferson County

The city may place a duty on garbage customers to provide the garbage department with updated contact information if the customers are not receiving garbage bills in the mail.

The city is authorized to adopt a payment plan to bring delinquent accounts up to date.

Section 22-27-5 of the Code of Alabama provides the city with the option to discontinue service for failure to pay service fees.

Section 22-27-5(e) of the Code also authorizes a city to pursue civil penalties, and section 22-27-7 authorizes a municipality to pursue criminal penalties for failure to pay service fees.

Because the records of the sewer department are considered a public writing or public record, the city may publish the names and account balances of delinquent garbage customers.

Dear Mayor Brasseale:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Pleasant Grove.

QUESTION

Does the City of Pleasant Grove have the authority to take the following actions:

(1) Requiring the customer to alert the city if he or she is not receiving the garbage bill in the mail.

(2) Granting the customer the option of a payment plan to bring the delinquent account up to date.

(3) Removing the garbage container for failure to submit a payment, resulting in a fee to resume pick-up service.

(4) Pursuing legal remedies for a customer's failure to take corrective action.

(5) Publishing the delinquent customer's name and account balance in the newspaper.

FACTS AND ANALYSIS

In your letter of request, you stated that the City of Pleasant Grove intends to send out a newsletter listing a series of actions the city may take against persons who fail to pay waste disposal fees for a period of one year or more.

Initially, you question whether the city may require customers to notify the city when the customer is not receiving a garbage bill. There are a number of contexts in which the customer bears the burden of notifying a governmental entity of changes to personal information. Taxpayers, for example, are required by law to notify the taxing jurisdiction of any change of mailing address, federal employer identification number, or taxpayer identification number. ALA. CODE § 11-51-90 (2008). Similarly, the Alabama Department of Motor Vehicles requires the address listed on an application or certificate of title to be current,

placing responsibility on the owner to notify the department within 30 days of any change of address. ALA. CODE § 32-8-2(1) (Supp. 2009).

The responsibility of a citizen to notify a governmental entity of a change of address is analogous to the city's requiring a customer to contact the municipality if the person is not receiving a bill in the mail. Therefore, it is the opinion of this Office that the city may shift responsibility onto the customer to properly notify the department of address changes.

Next, you seek guidance regarding the city's ability to allow delinquent customers to establish a payment plan. Section 22-27-5 of the Code specifically mentions fees and the nonpayment of fees. This section states, in pertinent part, as follows:

> (a) *Fees, etc.; mutual agreements or contracts.* The county commission or municipality undertaking the responsibility for providing services to the public under this article may establish fees, charges and rates and may collect and disburse funds within cooperating areas or districts, inside or outside the corporate limits of municipalities or inside or outside of county boundaries, for the specific purpose of administering this article and providing and operating a solid waste program. Also, said county commission or public authority may enter into mutual agreements or contracts with the government bodies of other counties, municipalities, corporations or individuals, where deemed to be mutually economical and feasible, to jointly or individually collect, haul and/or dispose of solid wastes generated within the cooperating area. All contracts or mutual agreements under this article shall be subject to review by the health officer, and all such contracts and agreements shall be subject to cancellation upon 30 days' notice from said health officer with the concurrence of the department, any time said contracts or agreements fail to be in the best interest of the health, safety and welfare of the citizens residing in the affected area.
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> . . . .
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> (e) *Nonpayment of fees, etc.* Any county commission or municipality establishing fees, charges and

> rates pursuant to subsection (a) of this section shall have the power and authority to adopt resolutions or ordinances providing that if the fees, charges or rates for the services furnished by the county commission or municipality, or licensee of either, under the provisions of said chapter, shall not be paid within 30 days after the same shall become due and payable, such county commission or municipality may, at the expiration of such 30-day period, suspend such services or may proceed to recover the amount of any such delinquency with interest in a civil action or both.

ALA. CODE § 22-27-5 (2006).

Under established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The statute does not specifically provide a county or municipality with the authority to permit partial or installment payments. This authority may, however, be inferred given a county's or municipality's ability to fashion resolutions or ordinances that address a customer's delinquency or failure to make payments.

Moreover, permitting partial or installment payments may afford the municipality the opportunity to avoid the cost and expense of litigation. As such, it is the opinion of this Office that the City of Pleasant Grove may establish a partial pay or installment plan for delinquent accounts. Initiation, however, of an installment payment plan would not preclude the ability of a county or municipality to collect on delinquent fees once the 30-day grace period set out in section 22-27-5 has expired if such payment plan proves ineffective.

You also inquire as to the city's ability to remove the garbage receptacle for a customer's failure to pay. As stated above, section 22-27-5(e) of the Code expressly authorizes a municipality to discontinue service after failure of a customer to pay within 30 days of such bill becoming due and payable. Assuming the garbage receptacle is provided as part of the disposal service, it is the opinion of this Office that either the city, or any licensee working on behalf of the city, may remove the garbage receptacle as part of the suspension or discontinuance of service.

Next, you question whether the city may pursue legal remedies against a customer who has failed to act or to correct a delinquent account. As discussed earlier, section 22-27-5(e) of the Code authorizes a municipality to suspend service, proceed with a civil action, or both, in instances where an account is delinquent. The City of Pleasant Grove, through section 74-6(d) of Ordinance 481 of the Pleasant Grove Code, has adopted the language used in section 22-27-5(e) of the Code. Thus, the City of Pleasant Grove may use these legal remedies.

In addition, section 22-27-7 of the Code authorizes the following criminal penalties for persons failing to pay the fees, rates, or charges for solid waste disposal:

> Any person violating any provision of this article or any rule or regulation made pursuant to this article shall be guilty of a ***misdemeanor*** and, upon conviction, shall be ***fined*** not less than $50.00 nor more than $200.00, and if the violation or failure or refusal to obey or comply with such provision of this article or such rule or regulation is a continuing one, each day's violation shall constitute a separate offense and shall be punished accordingly.

ALA. CODE § 22-27-7 (2006) (emphasis added).

The city has incorporated, by ordinance, language identical to section 22-27-7 of the Code of Alabama, which authorizes criminal delinquency proceedings. Because the city has complied with the provisions of section 22-27-3(a)(2) of the Code specifically by adopting rules and regulations to govern waste disposal that provide the city with legal remedies, the city may pursue both civil and criminal proceedings against persons who fail to take action to correct delinquent waste disposal fees.

Finally, you seek guidance regarding the ability of the city to publish the name and account balance of customers with delinquent accounts. This Office has previously held that municipal authorities are public entities, and the records of such entities should be made available for public inspection. Opinion to Honorable H.C. Wade, Chairman, Cumberland Mountain Water Authority, dated April 15, 1986, A.G. No. 86-00207; and opinion to Honorable W. Warren Aaron, Eclectic Water Works and Sewer Board, dated August 3, 1988, A.G. No. 88-00407. Section 36-12-40 of the Code of Alabama states that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except

as otherwise expressly provided by statute." ALA. CODE § 36-12-40 (Supp. 2009).

The Alabama Supreme Court has held that "[i]t is clear from the wording of § 36-12-40 that the legislature intended that the statute be liberally construed. In addition, we note, statutes intended for the public benefit are to be construed in favor of the public. *Gant v. Warr*, 286 Ala. 387, 240 So. 2d 353 (1970)." *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989). Specifically, this Office has held that billing and collection records are public records to which every citizen has a right under section 36-12-40 of the Code of Alabama. Opinion to Honorable Chris Goulart, Chairman, Daleville Water Works and Sewer Board, dated October 27, 1997, A.G. No. 98-00019; opinion to Honorable Bettie Scott, Clerk, City of Pell City, dated August 1, 1988, A.G. No. 88-00389.

Because records containing the names and account balances of delinquent customers are a matter of public record and are accessible by any member of the public, it is the opinion of this Office that the city may publish this information. Opinion to Honorable Robert W. Ennis IV, Attorney, City of Tuscaloosa, dated December 19, 2002, A.G. No. 2003-052. The city should not, however, publish personal information such as a home address or telephone number as this information is not subject to disclosure as a public record under section 36-12-40 of the Code of Alabama. *Goulart* at 4.

CONCLUSION

The city may place a duty on garbage customers to provide the garbage department with updated contact information if the customers are not receiving garbage bills in the mail.

The city is authorized to adopt a payment plan to bring delinquent accounts up to date.

Section 22-27-5 of the Code provides the city with the option to discontinue service for failure to pay service fees.

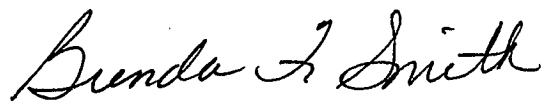
Section 22-27-5(e) of the Code also authorizes a city to pursue civil penalties, and section 22-27-7 authorizes a municipality to pursue criminal penalties for failure to pay service fees.

Because the records of the sewer department are considered a public writing or public record, the city may publish the names and account balances of delinquent garbage customers.

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

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