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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

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Honorable Barry D. Vaughn
Attorney, Fayetteville Water Authority
Proctor and Vaughn
Post Office Box 2129
Sylacauga, Alabama 35150-2129

Water Authorities – Water – Penalties – Liens – Owners – Foreclosure Sales – Talladega County

The Fayetteville Water Authority may not deny or discontinue water service to a new owner of property purchased at a foreclosure sale for the delinquent charges of a former owner.

Dear Mr. Vaughn:

This opinion of the Attorney General is issued in response to your request on behalf of the Fayetteville Water Authority ("Water Authority").

QUESTION

If a bank forecloses on a house and the water meter has been locked off for nonpayment under rules and regulations of the Water Authority, is it lawful and does the Water Authority have a right to refuse to unlock the meter at this residence until the bill has been paid?

FACTS AND ANALYSIS

Your request states that the Fayetteville Water Authority is incorporated as a public corporation pursuant to section 11-88-1, *et seq.*, of the Code of Alabama. ALA. CODE § 11-88-1 to 11-88-21 (2008 & Supp. 2012).

You ask this Office to clarify our opinion to Honorable Charles R. Stephens, Attorney, Waterworks and Gas Board of Cordova, dated December 20, 2010, A.G. No. 2011-021. The *Stephens* opinion stated that a waterworks board may not deny

or discontinue water service to a new tenant for the delinquent charges of a former tenant.

You question application of *Stephens* to foreclosed property at which a water authority provided service. That opinion relied on the rule set forth in *Ala. Water Co. v. Knowles*, 220 Ala. 61, 124 So. 96 (1929). The Alabama Supreme Court reaffirmed *Knowles* in *Price v. S. Cent. Bell*, 294 Ala. 144, 313 So. 2d 184 (1975), holding that "a public utility has no right to cut off or refuse service to a customer in order to compel that customer to pay the bill of a former subscriber, which it is not the duty of the customer to pay." *Price*, 294 at 149, 313 So. 2d at 188. In addition, the Court specifically extended the rule to foreclosed property, finding that a telephone company could not force the owner of a hotel purchased at a foreclosure sale to pay the old owner's bill in order to keep the same number and receive referral service.

You correctly state that application of the rule is conditioned on the "'absence of [a] statute making a service charge a lien on the premises.'" *Stephens* at 3, *quoting Knowles*, 124 So. at 103. Therefore, the determinative issue is whether the Authority has a statutory lien for delinquent charges. As with a waterworks board, the statutes for a water authority do not provide for such a lien.

CONCLUSION

The Fayetteville Water Authority may not deny or discontinue water service to a new owner of property purchased at a foreclosure sale for the delinquent charges of a former owner.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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