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December 9, 2013

Honorable Robert Smith
Chairman of the Board of Directors
Sumter County Water Authority
Post Office Box 994
Livingston, Alabama 35470-0994

Water and Sewer Boards – Fees – Penalties

The Sumter County Water Authority ("SCWA") and the Sumter County Sewer Authority ("SCSA") may enter into an agreement whereby the SCWA manages the accounts of the SCSA and discontinues water service for parties with delinquent sewer accounts. Because the authority to discontinue service is based on statutory authority set out in section 11-88-7 of the Code of Alabama, neither the SCWA nor the SCSA is required to have independent written agreements with customers prior to being able to disconnect service.

Dear Chairman Smith:

This opinion of the Attorney General is issued in response to your request on behalf of the Sumter County Water Authority.

QUESTIONS

Can the Sumter County Water Authority discontinue water service to a customer who is a resident of the towns of Gainesville, Geiger, or Emelle and is two months or more in arrears for nonpayment of sewer fees when the sewer system is not owned by SCWA, the customer has not acknowledged SCWA's authority to discontinue water service for the

nonpayment of sewer billings, but the town has an ordinance requiring the services of SCSA?

Can the Sumter County Water Authority discontinue water service to a customer who is a nonresident of the towns of Gainesville, Geiger, or Emelle and is two months or more in arrears for nonpayment of sewer fees when the sewer system is not owned by SCWA and the customer has not acknowledged SCWA's authority to discontinue water service for the nonpayment of sewer billings?

Can the Sumter County Water Authority discontinue water service to a customer who is a resident of the towns of Gainesville, Geiger, or Emelle and is two months or more in arrears for nonpayment of sewer fees when the sewer system is not owned by SCWA, but the customer has acknowledged SCWA's authority to discontinue water service for the nonpayment of sewer billings and the town has an ordinance requiring the services of SCSA?

Can the Sumter County Water Authority discontinue water service to a customer who is a nonresident of the towns of Gainesville, Geiger, or Emelle and is two months or more in arrears for nonpayment of sewer fees when the sewer system is not owned by SCWA, but the customer has acknowledged SCWA's authority to discontinue water service for the nonpayment of sewer billings?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Sumter County Water Authority, which is a public corporation, entered into a contract with the Sumter County Sewer Authority, which is also a public corporation. Both of these public corporations were established pursuant to section 11-88-1, *et seq.*, of the Code of Alabama. The parties have agreed that the SCWA would bill and collect payments on behalf of the SCSA. At this time, however, your questions contemplate whether a contractual agreement between the SCWA and the SCSA, and/or a similar agreement between the SCSA and its customers, or even a municipal ordinance, could be used to authorize the SCWA to disconnect water

service for the failure of a customer to pay sewer bills. Hence, the crux of the issue for you is whether the SCWA is authorized to disconnect a customer's water for that customer's failure to pay sewer charges.

Previously citing *MacMahon v. Baumhauer*, 234 Ala. 482, 486, 175 So. 299, 302-303 (1937), this Office noted that a city does not have authority to disconnect water service for nonpayment of anything other than water. Opinion to Honorable Johnny Traffanstedt, Mayor, Town of Collinsville, dated April 4, 2013, A.G. No. 2013-039. Accordingly, absent clear statutory authority to the contrary, the precedent established by *Baumhauer* is still the law in this state.

The various powers afforded to a water or sewer authority established pursuant to sections 11-88-1 through 11-88-21 of the Code of Alabama are found in section 11-88-7 of the Code. Relevant portions of this statute allow, among other things, an authority to enter into and execute contracts [ALA. CODE § 11-88-7(a)(6) (2008)]; to make and enforce reasonable rules and regulations [ALA. CODE § 11-88-7(a)(17) (2008)]; to cooperate with the United States of America and any agency or instrumentality [ALA. CODE § 11-88-7(a)(20) 2008)]; and to enter into management agreements [ALA. CODE § 11-88-7(a)(23) (2008)]. These provisions, however, authorize a system to act within the bounds and scope of power for that system.

Section 11-88-7(c)(3) contemplates the ability of a system to disconnect service for failure of a person to pay for a different service offered by that system. Although this provision seems to limit the ability of the system to act only in instances that pertain or relate to that system, section 11-88-7(d) specifically authorizes a sewer system to act in combination with any other water or fire authority. ALA. CODE § 11-88-7(d) (2008). This provision states as follows:

> (d) 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, shall have all of the powers and authority set forth in this section, either separately or in combination with any other system, service, or facility referred to in this section.

ALA. CODE § 11-88-7(d) (2008).

Based upon all the statutory authority available to entities established pursuant to section 11-88-1, *et seq.*, of the Code, it is the opinion of this Office

that the SCWA and the SCSA may enter into an agreement whereby the SCWA manages the accounts of the SCSA and discontinues water service for parties with delinquent sewer accounts. Because the authority to discontinue service is based on statutory authority set out in section 11-88-7 of the Code, neither the SCWA nor the SCSA is required to have independent written agreements with customers prior to being able to disconnect service.

CONCLUSION

The SCWA and the SCSA may enter into an agreement whereby the SCWA manages the accounts of the SCSA and discontinues water service for parties with delinquent sewer accounts. Because the authority to discontinue service is based on statutory authority set out in section 11-88-7 of the Code, neither the SCWA nor the SCSA is required to have independent written agreements with customers prior to being able to disconnect service.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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