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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable John C. McKelvey, Attorney  
Water and Sewer Board of the Town of Leighton  
Post Office Box 379  
Tuscumbia, Alabama 35674

*See also City of Pinson v. Utilities  
Bd. of City of Oneonta, \_\_\_ So. 2d  
\_\_\_, 2007 WL 2070349 (Ala. Sup.  
Ct. July 20, 2007)*

Water Boards - License Tax -  
Municipalities - Colbert County

The Water and Sewer Board of the Town of Leighton is not exempt from a business license fee imposed by the Town of Leighton on water works companies operating in the town.

Dear Mr. McKelvey:

This opinion of the Attorney General is issued in response to your request on behalf of the Water and Sewer Board of the Town of Leighton.

QUESTION

Does the three percent tax imposed by the Town of Leighton apply to the Water and Sewer Board of the Town of Leighton?

FACTS AND ANALYSIS

A municipality has the authority to impose a business license fee on any exhibition, trade, business, vocation, occupation, or profession not prohibited by the Constitution or state law that may be carried on in the city or town. ALA. CODE § 11-51-90, *et seq.* (1994). The Town of Leighton has adopted a business license ordinance, and section 14(a) of the ordinance states as follows:

Section 14. Utilities

(a) Each person engaged in the business of supplying electrical power, water and gas shall pay an

amount equal to three (3) percent of the gross receipts of the business transacted by such person in the town or its police jurisdiction of the preceding year. This subsection applies to private corporations.

Leighton, Ala., Ordinance 1993-E, § 14(a) (adopted Oct. 18, 1993).

The Water and Sewer Board of the Town of Leighton is separately incorporated under section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE §§ 11-50-310 to 11-50-324 (1992 & Supp. 2004). Section 11-50-322 exempts separately incorporated utility boards organized under these provisions from sales and use taxes but not license or excise taxes. ALA. CODE § 11-50-322 (Supp. 2004).

This Office concluded in two previous opinions that separately incorporated water boards or utility boards are not exempt from a city-imposed business license fee on water works and utility companies. Opinions to Honorable Barry D. Vaughn, Attorney, Town of Oak Grove, dated April 4, 2002, A.G. No. 2002-200 and to Honorable William R. Justice, Attorney, City of Alabaster, dated May 10, 1996, A.G. No. 96-00209.

In the *Justice* opinion, this Office stated as follows:

A license tax is an excise tax. Town of Mulga v. Town of Maytown, 502 So.2d 731 (Ala. 1987). An excise tax is a tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. Black's Law Dictionary, 5th Edition. A reading of § 11-50-322 does not reveal an exemption for an excise or license tax.

In Town of Mulga v. Town of Maytown, *supra*, it was concluded that a municipal corporation engaged in the business of selling and distributing gas to customers residing in another municipality was not exempt under § 11-50-322, and other statutory and constitutional provisions from an excise (license) tax imposed by the other municipality on businesses engaged in the manufacture or distribution of gas in its municipal limits. Although this decision was rendered before the 1994 amendment of § 11-50-322, the Attorney General is of the opinion that it is still applicable here.

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Section 91 of the Constitution of Alabama 1901 exempts from taxation the real and personal property of the state, counties, and municipalities. However, this provision does not apply to property of a separately incorporated board, and to the imposition of an excise or privilege license tax. Town of Hackleburg v. Northwest Alabama Gas District, 277 Ala. 355, 170 So. 2d 792 (1964).

A.G. No. 96-00209 at 3.

A municipal ordinance that imposes a license tax on a city's utilities board that does business in a municipality is consistent with state law. Accordingly, the Water and Sewer Board of the Town of Leighton is subject to the business license fee imposed by the Town of Leighton.


#### CONCLUSION

The Water and Sewer Board of the Town of Leighton is not exempt from a business license fee imposed by the Town of Leighton on water works companies operating in the town.

I hope this opinion sufficiently answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

TK/BFS

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