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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 13-0166

Mr. Brent Barbier, President
Iberville Parish Waterworks District No. 3
Post Office Box 99
Plaquemine, Louisiana 70764

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII. Sec. 14

The Iberville Parish Waterworks District No. 3 may not refund payments that a customer alleges were erroneously charged by the Water District unless the alleged error was, in fact, the fault of the Water District.

Dear Mr. Barbier:

Your have requested an opinion of this office regarding whether the Iberville Parish Waterworks District No. 3 ("Water District") may refund payments that a customer alleges were erroneously charged by the Water District and paid by the customer over the last three years. According to your request, a customer claims she contacted the Water District and requested that two of her four water meters be turned off effective April 2010. The Water District has no record of any contact by the customer or of any such request. Therefore, the meters were not turned off and the customer continued to receive and pay a monthly bill. A minimum amount is charged each month to a customer regardless of whether there was any consumption registered on the water meter. The Water District's records indicate that there has been no consumption on the water meters in question since April 2010. The customer states that her payments from April 2010 to present were made in error.

On numerous occasions, our office has advised public entities against the gratuitous alienation of public funds, property and/or resources and have concluded that to forgive, adjust downward, set aside, or otherwise issue a credit to a resident's utility bill without any error on the part of the public entity would constitute a violation of La. Const. art. VII, Sec. 14(A). This provision provides, in pertinent part, as follows:

Except as otherwise provided by this constitution, the funds, credit, property or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private ...

With regard to whether a public entity may reduce or refund a utility bill without running afoul of the constitutional provision cited above, the following opinions are relevant.

In La. Atty. Gen. Op. No. 97-425, our office opined that the Town of Pollock could not adjust the water bill for a Town resident when all evidence indicated that the water meter was properly read and properly working. The opinion stated that the Town would not be prohibited from adjusting a water bill that was clearly incorrect, such as in the case of a misread meter. Similarly, La. Atty. Gen. Op. No. 99-375, also addressed to the Town of Pollock, concluded that the Town could not reduce a water bill for a customer who had a leak in his house because the Town had no responsibility for the leak.

La. Atty. Gen. Op. No. 01-316 also addressed whether a waterworks district could adjust a water bill for a customer who sustained broken pipes on the customer's side of the meter due to flooding caused by Tropical Storm Allison. The opinion concluded that doing so would constitute a violation of La. Const. art. VII, Sec. 14(A). La. Atty. Gen. Op. No. 03-155 addressed whether the Town of Arcadia could implement a policy for adjustments to bills in those instances when a customer claims a water leak. The opinion concluded that such a policy may be implemented only in those instances where the damage to the water pipe was caused by the municipality.

Next, La. Atty. Gen. Op. No. 11-1087 opined that the City of Zachary had no authority to forgive, reduce, set aside or adjust downwards a particular resident's utility bill absent any error on the part of the City. The opinion further stated that utility users are obligated to pay the City the full amount owed for utility services rendered.

La. Atty. Gen. Op. No. 12-0023 opined that the Town of Erath was prohibited from issuing a credit to a customer for a water leak allegedly caused by an Act of God. The customer claimed he was not at fault in the water leak and that he should be entitled to a credit or refund because the water leak occurred while the customer was not at home and was the result of ground shifting. The opinion stated that the Town had no authority to forgive, adjust downward, set aside, or otherwise issue a credit to a resident's utility bill without any error on the part of the Town.

Most recently, in La. Atty. Gen. Op. No. 13-0079, our office addressed whether the Village of Folsom could write-off certain unpaid sewer and/or water bills. The opinion concluded that the Village had no authority to forgive, reduce, or otherwise set-aside a particular resident's sewer and/or water bill and that La. Const. art. VII, Sec. 14 imposes upon public entities a duty to exercise reasonable means to collect debts owed to them. The opinion stated:

Nonetheless, in the event the Village is confident that it has exercised reasonable means to recover certain unpaid sewer and/or water bills and

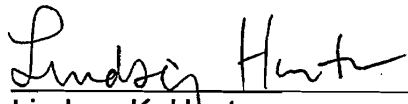
those efforts remain unsuccessful, it is also our opinion that the Village may employ certain measures to ensure that only the appropriate assets and liabilities are reflected in the Village's financials for accounting purposes only. Writing off debt would be one such acceptable measure, subject to future collection efforts as deemed reasonable and necessary. Again, we reiterate that writing off debt does not extinguish the debt. Further, please note that continuing to provide sewer and water services without payment of past and current charges could constitute a donation of public property prohibited by Article VII, Section 14 of the Louisiana Constitution.

Based on the foregoing, it is the opinion of this office that the Water District cannot refund payments that a customer alleges were erroneously charged by the Water District and paid by the customer over the last three years when the Water District has no record of any contact by the customer requesting two of her four water meters be turned off. If, on the other hand, the Water District is able to find a record of such a request and the failure to turn off the meters as requested was the sole fault of the Water District, then the Water District can refund the payments made since the date of the request.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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Attorney General

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JDC/LKH/chb