



LIZ MURRILL  
ATTORNEY GENERAL

STATE OF LOUISIANA  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 94005  
BATON ROUGE, LA  
70804-9005

June 6, 2024  
OPINION 24-0071

Honorable LaDawn C. Edwards  
Mayor  
Town of Jena  
P.O. Box 26  
Jena, Louisiana 71342

90-A-1 Public Funds & Contracts

La. Const. art. VII, § 14  
La. C.C. art. 3494

The Town of Jena may not refund payments for sewage service absent an error on the part of the Town.

Dear Mayor Edwards:

You have requested an opinion of the Attorney General's office concerning a potential refund of sewage payments made by a customer of the Town of Jena's ("Town") water and sewer system. Your request has been assigned to me for research and reply.

Your request indicates that the customer purchased property within the Town limits in 2001 and applied to the Town for both water and sewage service to the property. The Town connected the customer to the Town's water and sewage, and the customer began paying for water and sewage service.

In July of 2023, the customer experienced sewage leakage on her property and ultimately realized that her property was no longer connected to the Town's sewer system. Instead, her property was connected to a private septic tank.

The customer brought this to the Town's attention, and the Town promptly removed the sewer usage fee from the customer's utility bill for future billing periods. The customer has now requested a refund for prior years of service. While it is unclear which payments or for what period of time the customer is seeking a refund, the Town presumes that the customer intends the request to extend back to the date she originally acquired the property in 2001.

You state that the Town does not have any records indicating that the customer requested that the property be disconnected from the sewer system or that this property had begun using a private septic tank. Based on the above facts, you would like to know whether the Town may issue a refund to the property owner for prior sewer usage fees. For the following reasons, the Town may not refund the customer absent error on the part of the Town.

Louisiana. Const. Article VII, § 14(A) prohibits donations by public entities. The Louisiana Supreme Court held that this constitutional provision "is violated when public funds or

property are gratuitously alienated.” *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, 20 (the “Cabela’s” case). In prior opinions regarding utility bills, and more specifically sewer or water bills, our office has consistently opined that in order to comply with La. Const. art. VII, § 14(A), a public entity has no authority to set-aside, reduce, or otherwise forgive a debt owed to a public utility.<sup>1</sup> Furthermore, a public entity may not set-aside, reduce or adjust downward a particular resident’s utility bill absent error on the part of the public entity.<sup>2</sup> In La. Atty. Gen. Op. No. 13-0166, this office concluded that a waterworks district may not refund payments that a customer alleged were erroneously charged by the district unless the error was, in fact, the fault of the district. However, if the district were 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 district, then the district could refund any payments made since the date of the request for termination of service by the customer.

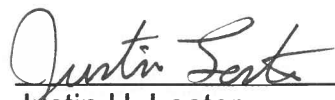
In this instance, the Town has no record of any request or notice by the customer to discontinue sewer service. We understand that the customer has produced no such documentation. The Town issues a flat-rate fee for sewer usage; sewer usage is not metered. Thus, the Town has no record that would enable it to determine when this particular property disconnected from the Town’s sewer system. Absent documentation that the Town was at fault for the contested sewer charges, a refund of any sewer usage fees paid by the customer would in our view violate La. Const. art. VII, §14(A). Nonetheless, if the Town or customer locates a record of a request to disconnect from the Town’s sewer system or a notice that the property was no longer connected to the Town’s sewer system, and the Town failed to disconnect and/or cease to issue sewer usage fees on the property, the Town may refund any sewer usage fee payments made since the date of the request, provided the claim has not prescribed.<sup>3</sup>

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

Yours very truly,

LIZ MURRILL  
ATTORNEY GENERAL

BY:

  
Justin H. Lester  
Assistant Attorney General

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<sup>1</sup> See, e.g. La. Atty. Gen. Op. Nos. 18-0052, 13-0192, 13-0079, and 10-0287.

<sup>2</sup> See, e.g. La. Atty. Gen. Op. Nos. 18-0052, 15-0057, 14-0055, and 13-0166.

<sup>3</sup> The prescriptive period for actions on open accounts is three years. La. C.C. art. 3494(4).