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November 14, 2024
OPINION 24-0084

Mr. James H. Armand
President of Waterworks District #1
Avoyelles Parish
P.O. Box 64
Bordelonville, LA 71320

172-A – WATER DISTRICTS – See Political
Subdivisions – 90-A

La. R.S. 33:3818	La. R.S. 33:3819
La. R.S. 33:3820	La. R.S. 33:4163
La. R.S. 42:12	La. R.S. 42:13
La. R.S. 42:14	La. R.S. 42:19

Answers questions relating to a waterworks district's
proposed rules.

Dear Mr. Armand:

Our office received an opinion request from you regarding whether proposed rules of the Waterworks District #1 of Avoyelles Parish (District) comply with Louisiana law. You have also asked what the notice requirements are for the new rules.

Your request notes that, due to continued growth in Avoyelles Parish, the District is approaching its capacity limitations. In your request, you state that you consider all properties that have ever received water service as “active,” even though some properties designated as “active” have not received water or paid a water bill for a significant period of time. Because inactive accounts have been designated as “active”, the District’s capacity to provide service is consumed by properties not actually using water service. The District is, consequently, unable to provide service to new customers who would use and pay for the service. According to your request, the District has explored options for expanding infrastructure to address the capacity limitations of the existing water system; however, you state that such an option is not presently available due to issues with financing and delays inherent to design and construction. Therefore, the District has asked for this opinion concerning its proposed rules.

You indicate that the District’s new proposed rules include provisions on capacity limitations, minimum charges for all accounts, and termination of service for non-payment. You also note that the District is publishing the rules on its website and is planning to send notice of the new rules to all of its customers in the mail with their next bill. Your request does not indicate whether the District has voted to adopt the rules.

Question: Are the District’s rules consistent with Louisiana law?

Conclusion: The District’s rules comply with Louisiana law.

Louisiana Revised Statute 33:3818 grants the board of commissioners of a waterworks district the authority to adopt by-laws, rules, and regulations for the proper conduct and

operation of a waterworks system in their district. Therefore, the District has the ability to adopt new rules.

The District's Rule on Capacity Limitations

The District's proposed rule provides:

Capacity Limitations:

The District is unable to supply all parcels, lots, and/or properties within the jurisdiction of the District with water service due to capacity limitations. The District retains an engineering consultant to advise with respect to the maximum active water services reasonably supported by the water system. In the event service to an applicant would exceed the District's ability to adequately supply the service to an applicant from the existing facilities and/or adversely affect service to other consumers to a reasonable extent, the District will not be obligated to render such service unless and until suitable self-liquidating financing is secured to cover any investment costs for additional water production facilities and/or distribution lines and/or operation and maintenance issues.

The District will not be obligated to extend service, connect existing or upgraded meters for new service, or install new customer meters to any applicant if the water system capacity would be unacceptably exceeded as recommended by the District's engineering consultant and/or the Department of Health. This section is applicable to all applicants which request to open or reestablish an account with the District for water service regardless of whether or not the applicant's land contains service lines and/or an existing meter from prior service.

However, in the event that an existing Customer terminates water service for the purpose of transferring the parcel, lot, or property and/or otherwise transferring the account holder to a lessee or other person or entity associated with the existing Customer, the existing Customer shall advise the District of this purpose of terminating water service in writing, in which case service may be considered continuous if the new applicant establishes service within one (1) year of the termination of water service by the prior customer. In no event shall the District be responsible for determining the purpose of a customer's termination of water service.

Our office, relying on La. R.S. 33:4163 and *Suburban Natural Gas Company, Inc. v. Waterworks District # 3 of Rapides Parish*, 223 So.2d 417, (La. App. 3rd Cir. 1969), has previously opined that a municipal-owned water company has a duty to provide water service unless just cause exists and that property owners desiring water service should not be treated any differently from others who are within the jurisdiction of the town. See La. Atty. Gen. Op. No. 04-0227.

The District's proposed rule regarding capacity limitations, in sum, states that: the District is unable to provide service to all properties within the jurisdiction of the District; the District is not obligated to provide service to new service applicants if such service would exceed the capacity limitations stated by the District's engineering consultant; and that, should an existing customer terminate service for the purpose of transferring the property to another, service at the transferred property will be considered continuous if established within one year of the termination.¹

We believe that an inability to provide service due to capacity limitations is just cause for not providing service. The District is not required to provide something it is incapable of supplying. Additionally, the rule does not treat applicants seeking service arbitrarily by distinguishing between existing customers and applicants for new service; rather, the rule is applicable to all service applicants desiring water service to their properties. Further, under the one year provision, it is the *property*, and not the new applicant, that is considered. The one-year allowance for reestablishment of service when occupancy of the property has changed allows for properties previously receiving service to continue such service regardless of a change in ownership.

The District's Rule on Minimum Charges

The proposed rule on minimum charges provides:

Minimum Charges:

All customers shall be subject to a minimum monthly charge set forth in the rate schedules. The minimum shall be multiplied by the number of dwelling units for Multi-Customer Residences and shall be multiplied by the number of dwellings for Other Multi-Dwelling Lots for which the District permits use of a master meter.

Louisiana Revised Statute 33:3820 grants the board of commissioners of a waterworks district the authority to fix the rates at which it supplies water, and allows for the rate to be based upon a metered or flat rate. The Louisiana Supreme Court has long held that a public utility may classify its customers "based upon material differences in the type and quantity of service furnished and to charge a different rate as between such classes." *Hicks v. City of Monroe Utilities Comm'n*, 237 La. 848, 873, 112 So.2d 635, 644 (1959).

In *Hicks*, the court found that a difference in charges between those within municipal limits and those without was discriminatory because a classification based on municipal limits was "entirely collateral to and unconnected with the particular service being rendered." *Id.* at 649. In interpreting *Hicks*, the Louisiana Third Circuit Court of Appeal found that the rate change at issue in the case before it was not discriminatory because it was a uniform rate which was applied to all customers. *Moore v. City of Westlake*, 2020-556, 2020-557,

¹ The District notes that, under the proposed rule, the one year allowance for reestablishment of service at a property where occupancy has been transferred is to account for a change in lessees or ownership of the property when the previous occupant has terminated the service rather than transferring the service.

pp. 8-9 (La. App. 3 Cir. 11/3/21), 362 So.3d 475, 481, *writ denied sub nom. Johnson v. City of Westlake*, 2022-00111 (La. 3/15/22), 334 So.3d 388.

The District's proposed rule contemplates a minimum fee for the first 0-2,000 gallons of water, and a metered rate for the gallons used thereafter.² It is within the District's power to charge a flat or a metered rate or a combination thereof. Additionally, and in compliance with *Hicks*, the District is establishing a classification, flat or metered, based on the quantity of service furnished. The District's rule is also uniform in its application – all customers are subject to the flat minimum rate for the first 0-2,000 gallons of water. As such, the District's rule on minimum charges is not discriminatory and is permissible under Louisiana law.

The District's Rule on Termination for Non-Payment

The proposed rule on termination for non-payment and restoration provides:

Restoration of Water Service after Disconnection for Non-Payment:

A. A Customer desiring restoration of water service after disconnection for non-payment must satisfy arrears in the full amount including reconnect fees.

B. If a customer does not satisfy arrears within ninety (90) days after disconnection, the Customer's account with the District will be deemed terminated. Thereafter, the person, business, or entity seeking to reestablish service at that parcel, lot, and/or property will be deemed an applicant/new customer for purposes of the Capacity Limitations section set forth above.

Our office has previously opined that a waterworks district may terminate service for non-payment, provided due process requirements are met. See La. Atty. Gen. Op. No. 07-0275 and *Coghlán v. Starkey*, 845 F.2d 566, *supplemented*, 852 F.2d 806 (5th Cir. 1988).

Our office maintains that, as long as the District is providing due process in connection with the termination, there are no legal authorities that would prevent the District from terminating service due to non-payment.

Currently, there are no legal authorities specific to the District that provide what due process requirements are when terminating water service due to non-payment. However,

² While the District may impose rates for services, it may not impose a tax. The District's proposed minimum charge is \$23.00. Our office notes that it is our policy to refrain from acting as a finder of fact and, therefore, will make no determination regarding the amount of the proposed minimum charges. However, a finder of fact would evaluate the charge, and the District's ability to charge the contemplated amount, in accordance with the factors as explained by the Louisiana Supreme Court in *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072 (La. 1983). As the District has not sought our opinion regarding the amount of the charge, we will not provide a further analysis of *Audubon* in this opinion.

while the District may not be subject to the jurisdiction of the Louisiana Public Service Commission, the Commission's rules regarding termination for non-payment may be helpful to the District in terms of what constitutes sufficient due process and notice prior to the cut-off of service. Louisiana Public Service Commission Rule 601(D) provides that, in order to disconnect a customer for non-payment of any principal amount, five (5) days written notice is required, and such notice "shall not be general in character but shall specifically advise the individual customer concerned that service will be discontinued five days thereafter unless the bill is paid." Louisiana Public Service Commission Rule 601(D) also provides that the contents of the notice be limited to termination and not include any other matter.

Question: What notices are required in connection with the District's rules?

Conclusion: The District is required to comply with Open Meeting's Laws when adopting rules. If the District wishes to send additional notices to customers, there is nothing prohibiting it from doing so.

Louisiana Revised Statute 42:11 *et seq.* provides the basis for the open meetings law and how meetings of public bodies are to be conducted. Louisiana Revised Statute 42:12 requires "that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy."

A public body must provide advance notice of its meetings. See La. R.S. 42:19. Such notice must include, among other things, the agenda of the meeting, and every item on the agenda must "be listed separately and described with reasonable specificity." See La. R.S. 42:19. Thereafter, the meeting must be open to the public, and the public body is required to allow a public comment period on agenda items before any votes are taken on those items. See La. R.S. 42:14.

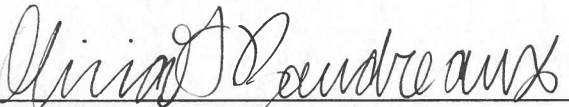
A waterworks district is a special district board that falls within the definition of a "public body" and is subject to open meetings laws. See La. R.S. 42:13(A)(3). As stated above, La. R.S. 33:3818 grants the board of commissioners of a waterworks district the authority to adopt rules. In addition, La. R.S. 33:3819 provides that commissioners may meet as often as necessary, but they are required to meet at least once every three months. A board of commissioners would adopt rules at the meetings contemplated by these statutes.

The notice for the adoption of rules and regulations is satisfied by compliance with the notice provisions laid out in La. R.S. 42:14 and 42:19 for public meetings. Additionally, there is no prohibition against providing additional notice to District customers should the District choose, and the District may send the additional notices you described in your opinion request.

We trust that this opinion of the Attorney General adequately responds to your inquiry. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,

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BY: 
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