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AUGUST 03 1998

OPINION NUMBER 98-141

Mr. William R. Aaron
Aaron & Turner, L.L.C.
13424 Hooper Road
Baton Rouge, LA 70818

167-B - Utilities, Public
LSA-R.S. 33:4305C

For Gas Utility District to charge lower rates for senior citizens for the same service provided to other customers in the District would violate anti-discrimination provisions of 1974 Const. Art. I, §3.

Dear Mr. Aaron:

On behalf of Gas Utility District No. 1 of East Baton Rouge Parish (District) you have asked for an opinion from this office regarding the legality of the District setting discounted fees for senior citizens.

Under the provisions of La. R.S. 33:4305 C., the District has "the right and power to fix the rates and charges at which it will supply gas". It is clear that this grant of authority to the District by the Legislature is subject to compliance with the state constitution. Article I, Section 3 of the 1974 Louisiana Constitution states:

No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.

The only issue posed in your request is age discrimination. Lower rates for senior citizens, however that is defined, would naturally discriminate against non-senior citizens on the basis of age by charging them higher rates. In *State of Louisiana ex rel. Guste v. Council of the City of New Orleans*, 309 So.2d 290 (La. 1975), a suit dealing with a ten percent late charge, brought by the Attorney General on behalf of the consumers of gas and electricity in the City of New Orleans and on behalf of state agencies who were consumers themselves, the Supreme Court stated, at page 294:

"...because public utilities enjoy monopoly status and are not subject to the competitive forces of the marketplace, public regulation of their affairs must act as a substitute to prevent a utility from dealing unfairly with its customers. Included in this public regulation is the prevention of unreasonable discrimination by the utility among its customers through

various business practices (E.g., rebates, preferential charges, and service inequalities.) While public utilities may reasonably distinguish among classes of customers by charging varying rates for varying services, any discrimination among customers as to the rate charged for the same service is uniformly considered impermissible. (citations omitted)

Based on the facts you have provided, the District is considering a different rate for one class of customers for the same service, which, based on the language of the above case, is impermissible.

This office issued Opinion No. 77-869 (June 16, 1977), a copy of which is attached, that dealt with a similar fact situation. In that instance, the City of Zachary passed an ordinance that effectively provided lower rates for senior citizens for the first 3,000 gallons of water provided by the utility. We opined that such an ordinance was discrimination against those customers who were not in the defined class of elderly users and based that opinion on the provisions of the state constitution cited above and *State of Louisiana ex rel. Guste v. Council of the City of New Orleans, supra*.

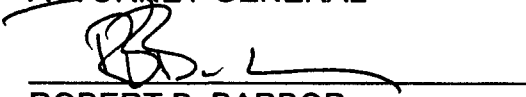
Since the District is not basing the rate variance on any criteria other than the age of the customer, such discrimination against the customers not included in the class of senior citizens is, in our opinion, an impermissible act in violation of the letter and spirit of the state constitution.

We hope this is responsive to your request, however if you should have any further questions or comments, please contact the undersigned at your convenience.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

By:


ROBERT B. BARBOR
Assistant Attorney General

RPI:RBB:glb



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE

Baton Rouge
70804

June 16, 1977

OPINION NO. 869

UTILITIES, Public-167-B
MUNICIPALITIES-----71
La. 1974 Constitution, Art.1,§3
The City of Zachary ordinance prescribing a much lower water rate for senior citizens is unlawful in that it discriminates against those customers who are not elderly citizens.

Honorable Jack L. Breaux
Mayor, City of Zachary
P.O. Box 310
Zachary, Louisiana 70791

Dear Mayor Breaux:

In your opinion request of June 6, 1977, you ask our opinion of an ordinance recently passed by the Zachary City Council by which senior citizens would receive their first 3,000 gallons of water per month for a fee of \$.50. The ordinance states any water used per month in excess of 3,000 gallons shall be charged on the regular rate basis with credit for the \$.50. The regular rate for the first 3,000 gallons is \$4.38.

Article I, Section 3 of the 1974 Louisiana Constitution states:

No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime. (Emphasis added)

Additionally, the question of whether a municipal utility may charge different rates to its customers was most recently discussed at the Louisiana Supreme Court in State of Louisiana vs. City of New Orleans and New Orleans Public Service, Inc., 309 So. 2d 294 (1975). In this case the Supreme Court said the courts of this state have adopted the generally prevailing rule that a utilities rate structure must be nondiscriminatory. The court further stated, "While public utilities may reasonably distinguish among classes of customers by charging varying rates for varying services, any discrimination among customers as to rates charged for the same service is uniformly considered impermissible." To the same effect see Hicks vs. City of Monroe Utilities Commission, 112 So. 2d 635 (1959).

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In accord with Article I, Section 3 of the 1974 Louisiana Constitution and these Louisiana Supreme Court decisions, it is the opinion of this office the above described ordinance of the City of Zachary is unlawful as it discriminates against those customers who are not elderly citizens.

If we can be of further assistance, please contact us.

Sincerely,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY:

TOMMY D. TEAGUE
STAFF ATTORNEY

TDT:bms