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Legal Opinion 2009-014

TO: John Engen, Mayor; City Council; Bruce Bender, CAO; Brentt Ramharter, Finance Director; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Starr Sullivan, Wastewater Treatment Plant Superintendent; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE: May 1, 2009

RE: Municipal sanitary sewer rates shall be uniform for like services in all parts of the municipality

FACTS:

April 29, 2009, the City Council Public Works Committee discussed the potential for reducing a sanitary sewer connection fee for existing, unconnected residential structures. The discount discussion was not planned to apply to all sewer connections.

ISSUE:

Does Montana state law establish any statutory criteria pertaining to a municipality establishing sanitary sewer rates?

CONCLUSION:

Yes, Mont. Code Ann. §§ 78-13-4301 and 69-7-101 require a municipality's sanitary sewer and water rates be uniform for like services in all parts of the municipality, have an equitable basis and be reasonable and just.

LEGAL DISCUSSION:

Montana statutes pertaining to a municipality establishing municipal water, sanitary sewer and/or storm sewer system rates require the municipality to be “uniform for like services in all parts of the municipality” have an “equitable basis” and be “just and reasonable.”Mont. Code Ann. § 7-13-4304 provides:

7-13-4304. Authority to charge for services. (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.

(4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

Further, Mont. Code Ann. §§ 7-13-4307 and 7-13-4308 MCA provide:

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

7-13-4308. Change and readjustment of charges. The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established, provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in 7-13-4307.

Title 69, Montana Code Annotated, is entitled *Public Utilities and Carriers*. Chapter 7 of Title 69 is entitled *Municipal Utilities*. Mont. Code Ann. §§ 69-7-101 and 69-7-111 provide:

69-7-101. Municipal utilities -- regulation by municipality. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just.

69-7-111. Municipal rate hearing required -- notice. (1) Except as provided in 75-5-516 and 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and


(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

CONCLUSION:

Yes, Mont. Code Ann. §§ 78-13-4301 and 69-7-101 require a municipality's sanitary sewer and water rates be uniform for like services in all parts of the municipality, have an equitable basis and be reasonable and just.

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Jim Nugent, City Attorney

JN:kmr