

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

May 24, 2019

John D. Mayo, Esq.  
Mayo Mallette, PLLC  
5 University Office Park  
Oxford, Mississippi 38655

Re: Installation of water line as tie-in to city main

Dear Mr. Mayo:

Attorney General Jim Hood has received your request for an opinion on behalf of the City of Oxford and has assigned it to me for research and response.

### Issues Presented

You inquire as to whether a municipality may discount water bills incurred by a rural water association as partial reimbursement for costs associated with the installation of a new water line/tie-in to the city main. Specifically, you ask the following:

A rural water association has requested to tie-in and purchase water from the City of Oxford municipal water system and to enter into a written agreement with the City. To accomplish the tie-in will require the rural water association to install a water line between their system and the closest city main. Once installed, the new water line will be donated to the City. The rural water association has requested that the City partially discount its future water bills until such time as the discount equals 50% of the installation cost of the new water line. In addition, or as an alternative to the discount, the rural water association has requested that the agreement include language to the effect that should the City cancel the agreement within the first 4 years, the City would be obligated to pay a decreasing lump sum amount to the rural water association (higher in the first year and decreasing to \$0 after 4 years).

1. Is it permissible to discount the rural water association's future water bills until such time as the total discount reaches 50% of the cost of construction of the new water line?

2. Is it permissible for the City to agree to a penalty clause whereby should the City cancel the agreement within the first four years, the City would pay to the rural water association a decreasing lump sum amount?

### **Response**

In accordance with the limitations imposed in Section 21-27-27 of the Mississippi Code, the municipality may not discount water bills incurred by the rural water association. While we question the authority of the municipality, under these facts, to partially reimburse the rural water association for the installation of the subject water line, the determination as to whether the installation of the water line is "part of the overall purpose and plan of providing present and future utility service to the general public" is one to be made by the municipal governing authorities. The municipality may not agree to the enforcement of a penalty clause, nor may it bind successor boards to such contract.

### **Applicable Law and Discussion**

With respect to the authority of a municipality to provide free utility services, Section 21-27-27 of the Mississippi Code specifically states that:

No free service shall be furnished by any such system, or combined system, to any private person, firm, corporation, or association. The municipality may, however, furnish such service, free of charge, to the municipality or any agency or department thereof, to any public school, or to any hospital or benevolent institution located within such municipality, including county, city, and community fairs.

In prior opinions, we have interpreted Section 21-27-27 to prohibit municipalities from providing discounts for utility services. See MS AG Op., Rutledge (August 16, 2002); MS AG Op., Jones (December 22, 2000). Thus, a municipality may not discount the utility charges incurred, as such would result in an unlawful donation. In this instance, in accordance with the limitations imposed by Section 21-27-27, the municipality may not discount<sup>1</sup> water bills incurred by the rural water association.

With regard to the authority of a municipality to extend utility lines, we have previously opined that:

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<sup>1</sup> We do not consider the application of a credit used as a means for compensating a party for a benefit it has bestowed upon a municipality in accordance with a contractual arrangement to be a "discount" as contemplated in Section 21-27-27 and our corresponding opinions. Having said that, we note that the subject water line will be donated to the municipality after installation is complete. Once the water line has been donated by the rural water association and accepted by the municipality, it becomes municipal property. In our opinion, any attempt to reimburse the rural water association for a water line that is municipal property would certainly amount to an unlawful donation.

[a] city may and is legally obligated to extend its service to furnish adequate water supply to its residents where there is a reasonable demand for the service and "a reasonable extension of the service can be made to meet the demand, considering the cost of the extension and the maintenance of the service, the present and prospective number of subscribers or customers, the present development and the prospective growth and development of the locality to be served, and the present and prospective revenue to be obtained from furnishing water in the territory to be served by such extension." *Ladner v. Mississippi Public Utilities Co.*, 131 So. 78, 79 (Miss. 1930). See also *Greenwood v. Provine*, 143 Miss. 42, 108 So. 284 (1926). "The city has a duty to construct its mains as to enable it to comply with its duty to furnish adequate water supply to its patrons." *Brown v. Meridian*, 102 Miss. 384, 59 So. 795 (1912). If the city finds an extension is necessary for the proper operation of the system and the benefit of the public, taking into consideration the above factors, then it may extend its water main to provide such service.

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MS AG Op., Hammack (April 12, 1995)(citing MS AG Op., Smith (July 31, 1986)). See also MS AG Op., Rutledge (September 30, 2005). In our opinion to Chelsea Brannon, we also provided the following:

[w]ith respect to the installation of lines, while a municipality may not install a main line on private property for the sole purpose of benefitting one land owner, we have opined that "a municipality may construct a water line on private property, subject to proper easement, when such construction is a part of the overall purpose and plan of providing present and future utility service to the general public by future connections or extensions." MS AG Op., Cockroft (May 18, 2001); MS AG Op., Hammack (April 12, 1995). Whether the construction is a part of the overall purpose and plan of providing present and future utility service to the general public is a determination to be made by the governing authorities.

MS AG Op., Brannon (December 21, 2012). While we question the authority of the municipality, under these facts, to partially reimburse the rural water association for the installation of the subject water line, the determination as to whether the installation of the water line is "part of the overall purpose and plan of providing present and future utility service to the general public" is one to be made by the municipal governing authorities.<sup>2</sup>

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<sup>2</sup> We note that Sections 21-25-51 through 21-25-59 grant broad authority to municipalities and rural water associations to work together for the purpose of addressing the needs and development of the fire protection of local communities. Specifically, Section 21-25-51 provides the following:

(1) It is the purpose of Sections 21-25-51 through 21-25-59 to permit the governing

John D. Mayo, Esq.  
May 24, 2019  
Page 4

In response to your remaining inquiry, we have previously opined that a board of supervisors may not agree to a contract that contains a liquidated damages clause enforceable against the county. MS AG Op., Sorey (September 21, 2012). In our opinion, a municipality lacks the same authority. Thus, a municipality may not agree, nor bind successor boards, to such a contract.<sup>3</sup>

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Leigh Triche Janous  
Special Assistance Attorney General

## OFFICIAL OPINION

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authorities of any municipality and a rural water association operating within the corporate limits of the municipality to make the most efficient use of their powers in upgrading their respective water systems for the purpose of improving local fire protection by enabling them to cooperate and to contract with each other on a basis of mutual advantage and thereby provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of the fire protection of local communities.

(2) The governing authorities of any municipality may enter into an interlocal agreement with any rural water association operating within the corporate limits of the municipality for the purpose of constructing, new construction or upgrading the water system of the municipality or the water association, or both, for the purpose of improving the fire protection of the municipality.

See MS AG Op., Tyner (October 20, 2006).

<sup>3</sup> In addition, barring statutory authority, a municipality may not bind successor boards to contracts.