



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 31, 2022

The Honorable Leslie Childress
Mayor, Town of Flora
Post Office Box 218
Flora, Mississippi 39071

Re: Municipal Authority to Terminate Water for Nonpayment of Municipal
Sewer Service

Dear Mayor Childress:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Town of Flora (“Town”) provides sewer service to the residents of the Churchill Park Subdivision (“Subdivision”), which is located outside the Town’s municipal limits. The water service for the Subdivision is provided by a separate entity, the West Madison Utility District (“Utility District”). The Town has no agreement with the Utility District to terminate a resident’s water service due to nonpayment of sewer service.

Question Presented

May the Town terminate water service provided by the Utility District to residents of the Subdivision for nonpayment of sewer service provided by the Town?

Brief Response

No. The Town does not have the authority to terminate water service for nonpayment of sewer service because the Town does not provide water service in the Subdivision.

Applicable Law and Discussion

Municipalities are authorized to own and operate water systems, any other utility system, or a combination of systems as defined in Section 21-27-11(b). Municipalities are further authorized by Section 21-27-39 to provide utility services to citizens within five (5) miles outside their corporate limits. Pursuant to Section 21-27-23(e), municipalities have the authority:

To establish, maintain and collect rates for the facilities and services offered by any such system; provided that if there is a combination of systems into one or more systems, the municipality establishing the same shall be and is empowered to establish, maintain and collect rates for any and all of the services or for any combination thereof, **and the municipality may discontinue any or all of the services upon any failure to promptly pay the charges fixed for the services....**

(emphasis added.) We have opined that a municipality may terminate a utility service for failure to pay a just bill, but that “authority is specific to the unpaid service provided.” MS AG Op., *Greenlee* at *1 (Apr. 3, 2009). According to Section 21-27-23(e), this authority to discontinue services for failure to pay is limited to services provided by the municipality. The Town has neither ownership nor operational authority over the water service provided to the Subdivision. It is therefore the opinion of this office that because the Utility District, not the Town, provides water to the residents of the Subdivision, the Town has no authority to terminate the water services in the Subdivision.

It appears from your request that your understanding of the concerns raised by the Mississippi Department of Environmental Quality (“MDEQ”) regarding shutting off sewer service for nonpayment without simultaneously shutting off water service is not based on your own discussions with MDEQ, and a direct conversation with that agency may offer alternative options for enforcing payment for services while ensuring appropriate health and safety standards for the residents of the Subdivision. For example, in the 2004 request to this office by your predecessor, Flora Mayor Richardson noted that some of the residents of the Subdivision were previously on septic tanks and could be reconnected. MS AG Op., *Richardson* (Feb. 2, 2004). We would also note that an interlocal agreement with the Utility District that could allow the Town to enforce payment for sewer services would not be atypical. *See* MS AG Op., *Jacks* (Mar. 30, 2012).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General