



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 8, 2024

Colmon S. Mitchell, Esq.
Attorney, City of Batesville
Post Office Drawer 1586
Batesville, Mississippi 38606

Re: Authority to Refund Utility Bill Late Fees

Dear Mr. Mitchell:

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

OFFICIAL OPINION

Background

Your request states that two utility bills the city of Batesville (“City”) sent to a new commercial customer contained errors resulting from actions of both the City and the customer. While the City and the customer were working to resolve the issues with these two bills, another billing cycle rolled around, and the City sent a third utility bill to the customer. All three bills covered different time periods of utility service. There was no overlap. While the third bill was ultimately determined to be correct, the customer unilaterally chose not to pay any of these bills until the issues with the first two bills were resolved to the customer’s satisfaction. Late fees on the first two bills were not charged since the City contributed to the problems with those two bills. After the issues were resolved, the customer paid all three bills including a late fee added to the third bill, which the customer protested. After paying the bill in full, the customer requested that the City refund the late fee to the customer.

Question Presented

May the City refund a late fee to the customer on a utility bill for what was ultimately determined to be an undisputed amount?

Brief Response

A lawful debt owed to the municipality may not be disposed of except by payment into the proper treasury. However, if there is a dispute as to the amount owed for the services rendered, the City, in its discretion, may reduce the bill to be consistent with the amount owed for the services rendered.

Applicable Law and Discussion

As an initial matter, to the extent your request deals with past actions taken by the City, this office cannot by official opinion validate or invalidate past actions. Official Attorney General's opinions are issued on prospective questions of state law pursuant to Mississippi Code Annotated Section 7-5-25.

Article IV, Section 100 of the Mississippi Constitution provides, in pertinent part:

No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the Legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury.

We have consistently opined that Article IV, Section 100 of the Mississippi Constitution prohibits a municipality from compromising or forgiving claims which are not doubtful and are owed to a municipality. MS AG Op., *Williams* at *2 (Jan. 21, 2011). If a customer owes a lawful debt to a municipality, such debt may not be released or extinguished, except by payment into the municipal treasury. *Id.* However, when asked about a billing dispute, we have previously said that a municipality may reduce a utility bill in an amount that coincides with the service a customer did, in fact, receive. MS AG Op., *Hollingsworth* at *2 (Feb. 20, 2009). If the City determines that the late fee resulted from the overall billing dispute between the City and the customer, and but for that dispute, the customer would have paid the third utility bill in a timely manner, then the City, in its discretion, may refund the late fee, which would not be a refund of the cost of services actually received.

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