

Opinion No. 23

**Cities and Towns—Sewer and Water
Systems—Discontinuance of Water
Service for Failure to Pay Sewer
Charges.**

Held: A city which operated a water system may by ordinance provide for the discontinuance of the water service when rental for the use of the sewer system, financed from funds realized from the sale of revenue bonds, is delinquent.

June 19, 1951.

Board of Railroad Commissioners
Ex-officio
Public Service Commission
Capitol Building
Helena, Montana
Attention: Mr. Edwin S. Booth,
Secretary-Counsel

Dear Sirs:

You have requested an opinion from this office on the following:

“Where a city operates a water utility, and likewise has installed sewer facilities from funds derived from Revenue Bonds and makes a charge for sewer service which said charges are added to the water bill as a surcharge, may the city discontinue or refuse water service where the water charges are paid but the sewer charges are delinquent?”

Section 70-103, Revised Codes of Montana, 1947, gives the Public Service Commission jurisdiction over water utilities whether private or municipally operated and Section 70-104 authorizes the commission to make rules and regulations necessary in the exercise of the powers conferred upon the commission. In accord with the authority given, your commission adopted Rule G-12 which permits the operator of a water system to discontinue service to any consumer for failure to pay water rent. Our Supreme Court in State ex rel. Deeney v. Butte Electric and Power Company, 43 Mont. 118, 115 Pac. 44, considered the propriety of a rule of a utility company for discontinuance of service upon non-payment of rent. The court said in this regard:

"It is likewise properly conceded by the relator that such a company may adopt and enforce whatever rules and regulations, or pursue any course of conduct it may deem necessary to protect its interests, providing they are reasonable, and that a rule that the particular service may be discontinued as to any patron who fails or refuses to pay the price of the service when due is reasonable."

There is no statutory authority for the Public Service Commission to approve rates, rules or regulations relating to sewer service and this office specifically held that the jurisdiction of your commission did not extend to sewer service. Opinion No. 127, Volume 22, Report and Official Opinions of the Attorney General.

As you stated in your letter, there is no practical means of measuring the use of the sewer system other than by measuring the consumption of water. It is apparent that the water system and the sewer system are closely related and if a patron of both systems were deprived of the use of the sewer system without limiting his use of the water system a serious problem of disposal of the water after use would arise which might be detrimental to the public health of the community. In fact, an adequate sewer system is almost a necessity for the use of a water system.

By virtue of Section 11-2217 any city or town when authorized by a vote of the qualified electors may establish a sewer system and make equitable charges for its use. This section specifically states that the "charges may be fixed on the basis of water consumption." Section 11-2219 more specifically grants the power to a municipality to fix and establish rates for the use of a sewer system and also permits the readjustment of rates from time to time to meet the charges of operation and financing.

Bonds may be issued to pay for the construction of the sewer system under the authority granted by Section 11-223, Revised Codes of Montana, 1947, which bonds are payable from the revenue of the sewer system and Section 11-2221 prohibits the payment of the bonds by taxation. The Municipal Revenue Bond Act of 1939, Section 11-2401 to 11-2413, Revised Codes of Montana, 1947, are of similar import

and also authorize such a bond issue.

None of our statutes which authorize the construction of a sewer system financed by revenue bonds answer your question in specific terms. However, Section 11-2219, Revised Codes of Montana, 1947, provides in part:

"The governing body of such municipality shall have full power and authority, and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

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 and operation, repair, and maintenance and for the payment of the sums required to be paid into the sinking fund and for the ten per cent (10%) depreciation charge.

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 preceding paragraph."

The powers above granted are broad in scope and contemplate sufficient revenue to meet the payments due on the bond issue. It is a reasonable assumption that the implied power to enforce the payments of sewer rental is also granted. In fact, Section 11-2219 makes it the duty of a city to collect the sewer rental. Also, Section 11-926, Revised Codes of Montana, 1947, grants to a city or town the power to regulate the use of sewers.

The same question has been presented in other states and in the case of *Gatton v. City of Mansfield*, 67 Ohio App. 210, 36 NE (2d) 306, the court considered a regulation which authorized that the water supply be shut off to residents who were delinquent in payment of sewer charges. The court said of this regulation: "So the main and principal question in the instant case is whether the rule and regulation providing for the discontinuance of a collateral service closely related to the

water service is authorized and valid." The court held the regulation was valid, since "the sewer rental is based on the amount of water used, the operation of the sewerage system is dependent upon the water supply, and the water and sewer service may be rightfully considered as one transaction."

To like affect are, *State v. City of Miami*, 157 Fla. 726, 27 So. (2d) 118 and *McMahan v. Baumhauer*, 234 Ala. 482, 175 So. 299.

If a city did not have the power to discontinue the water service when the sewer charges have not been paid, the city would be hampered in collecting such rental. It is well within the powers of a city as are generally granted by our statutes to permit the discontinuance of the two closely related services when the sewer rental is not paid.

It is, therefore, my opinion that a city which operates a water system may by ordinance provide for the discontinuance of the water service when rental for the use of the sewer system, financed from funds realized from the sale of revenue bonds, is delinquent.

Very truly yours,
ARNOLD H. OLSEN
Attorney General