

VOLUME NO. 37

OPINION NO 30

CITIES & TOWNS - Service charge for connections to municipal sewer systems; MUNICIPAL SEWER SYSTEMS - Service charge for sewer connection; REVISED CODES OF MONTANA, 1947 - Sections 11-901, 11-2216, 70-103, 70-105, 82-3502, 84-4726.

- HELD: 1. A municipality may impose an initial charge for connections to the municipal sewer system.
2. The fee must be reasonable and the amount collected can be placed in a special fund used for repairs and capital improvements.
3. No special provisions exist as to public notice or hearings.
4. The service charge can be based upon the size of the water service.

31 May 1977

Norbert F. Donahue, Esq.
Kalispell City Attorney
P.O. Box 899
Kalispell, Montana 59901

Dear Mr. Donahue:

You have requested my opinion regarding the following questions:

1. May the Kalispell City Council impose a service charge for connections to the municipal sewer system?
2. Is there a limitation on the fee and can the amount collected be placed in a special fund?
3. Is public notice and/or a hearing required before the ordinance may be enacted?
4. Can the charge be based upon the size of the water service line and is that assessment basis discriminatory?

Section 84-4726.1, R.C.M. 1947, provides:

The council of any city or town operating a municipal sewer system may fix by ordinance the rates for service charges in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall be as nearly as possible equitable in proportion to the benefits and services rendered. An original charge for the connecting sewer line between the lot line and the sewer main may be assessed when such connecting sewer line is installed. (Emphasis added.)

It is clear the the service charge the city seeks to impose is specifically authorized by law. Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing to construe. Olson v. Manion's Inc., 162 Mont. 197, 510 P.2d 6 (1975). Nor is the statute otherwise modified.

For example, section 11-2216, R.C.M. 1947, a statute regarding city sewer systems in special improvement districts, refers primarily to the establishment and construction of sewer systems. Once a system is properly established however, section 11-2216(3) provides that the city or town council may establish and collect rentals for the use of any such sewer system and fix the scale of such rentals. The statute does not mention a fee for the connection of sewer lines. However, the section does state that its provisions are not exclusive:

...The revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may now be legally collected for sewer payment.

Nor is the service charge in question inconsistent with the provisions for county sewer systems in sections 16-4416; 16-4525 and 16-4526, R.C.M. 1947. The Montana Supreme Court has upheld the propriety of similar service charges for water connections. Leishner v. City of Billings, 135 Mont. 109, 357 P.2d 359 (1959). Without doubt a city operating a public sewer system may impose a service charge for connection of private sewer lines to the main line.

The next questions concern whether or not the amounts collected can be placed in a special fund and used only for the purpose of replacement or capital improvement of the

existing sanitary sewer lines; and whether there is a limitation on the amount of the fee.

Section 84-4726.1, supra, makes no specific mention of how the fee is to be used. It has long been the case in the State of Montana that:

Where power is conferred upon a municipality and the mode is prescribed, such mode must be followed; but if no mode is prescribed, the power is to be exercised in such manner as municipal officials, in their discretion, shall determine upon. State v. Stark, 100 Mont. 365, 370, 52 P.2d 890, 892.

Further, in Milican v. City of Miles City, 51 Mont. 374, 153 P. 276, the court using broad language held that cities are to operate their affairs when engaged in proprietary activities, in a "business like manner."

We can again look for guidance to section 11-2216(3), supra. That section refers to "rentals for the use of sewer systems" and provides in part:

...the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance, and repair of any such sewer system.

The city of Kalispell has exercised proper discretion in providing the special fund for the use of the connection fee and has conducted this affair in a "business like" manner. In addition, the use to which the fee shall be put is consistent with the statute providing for the use of rental money collected from the operation of a city sewer system. Therefore, it is my opinion that the special fund established pursuant to local ordinance number 852 is proper.

No statute places a specific limitation on the amount of this connection fee. However, a municipality engaging in the sewage business is a "public utility" as defined in section 70-103, R.C.M. 1947. Section 70-105, R.C.M. 1947, provides in pertinent part:

the charge made by any public utility...shall be reasonable and just and every unjust and unreasonable charge shall be prohibited and declared unlawful.

As a utility, the city sewer project is potentially subject to the jurisdiction and review of the Public Service Commission. However, the Public Service Commission has broad discretion and is not required to do more than it deems appropriate. Montana Consumer Counsel v. Public Service Commission, et al, 32 St. Rptr. 1026, 541 P.2d 769 (1976). You have advised that the Public Service Commission has declined to assert jurisdiction over municipal sewer utilities. Consequently, only the statutory provisions cited above are applicable. The only statutory limitation on the amount of the charge is that it be reasonable and non-discriminatory.

Your next question is whether public notice or a public hearing is required before the council may enact the ordinance. By virtue of the provisions of section 11-901, R.C.M. 1947, the city council has the power to enact ordinances necessary for the management of the affairs of the community. Of course, when the council meets for the purpose of enacting ordinances, those meetings must be open to the public under Montana's Open Meeting Law, section 82-3502, R.C.M. 1947. The statute in question, section 84-4726.1, supra, contains no specific requirements regarding notice or hearing prior to the enactment of the ordinance. The statute merely provides that the council "may fix by ordinance the rates for service charges in advance or otherwise." Again, the Public Service Commission has declined to assert jurisdiction over municipal rates. As there are no specific notice requirements regarding this ordinance, the city council had the discretion when acting in an open meeting to pass the ordinance without further public notice, as it does with other city ordinances.

Finally, you ask whether the city can base its charge upon the size of the water service line and whether the assessment method is discriminatory.

On its face the enabling statute provides a clear and concise answer to this question. Section 84-4726.1, supra, provides in pertinent part:

The rates shall be uniform for like service in all parts of the municipality and shall be as nearly

as possible equitable in proportion to the benefits and services rendered.

As long as the rates are uniform for like service and reasonably related to the benefits provided, the city can use any basis for the charge and no element of unlawful discrimination exists.

THEREFORE, IT IS MY OPINION:

1. A municipality may impose an initial charge for connections to the municipal sewer system.
2. The fee must be reasonable and the amount collected can be placed in a special fund used for repairs and capital improvements.
3. No special restrictions exist as to public notice or hearings.
4. The service charge can be based upon the size of the water service.

Very truly yours,

MIKE GREELY
Attorney General