Opinion No. 2007-250

December 11, 2007

The Honorable John Paul Wells
State Representative
119 South Elm Street
Paris, AR 72855-3807

Dear Representative Wells:

I am writing in response to your request for an opinion on behalf of the City of Booneville concerning Booneville City Council Ordinance Number 2007-831, approved April 23, 2007, which increased water rates for users of the City's water system. According to correspondence attached to your request, it has been suggested that the section of the Ordinance enacting a "Water Development Fee" may be affected by A.C.A. § 14-56-103 (Supp. 2007), which authorizes the assessment of a "development impact fee." The Water Development Fee under Booneville Ordinance No. 2007-831 reportedly has been implemented, and the Booneville City Attorney wishes to know whether A.C.A. § 14-56-103 comes into play.

RESPONSE

As explained further herein, A.C.A. § 14-56-103 comes into play when a city or town imposes impact fees against new development in order to cover costs attributable to such development. The "Water Development Fee" under Booneville Ordinance No. 2007-831 (hereinafter "Development Fee") does not appear to be such a fee. Accordingly, the Development Fee appears to be unaffected by A.C.A. §14-56-103.

The Ordinance establishes the Development Fee as follows:

> A "**Water Development Fee**" shall be instituted and enacted for all customers in order to provide a dedicated fund earmarked toward

> offsetting a portion of costs associated with site selection, environmental issues, design, maintenance and operation of a future new water supply and treatment and transmission facilities. This fee will be based upon all water purchases by every customer served by Booneville and said Water Development Fee is hereby set at TWENTY FIVE CENTS ($0.25) PER EACH ONE THOUSAND GALLONS FOR ALL USERS.

Booneville City Council Ordinance No. 2007-831, § 5.

The Development Fee plainly applies to "all customers," the purpose being to help finance the development of new water facilities. There is no suggestion under the Booneville Ordinance that this fee constitutes a "development impact fee" as contemplated by A.C.A. § 14-56-103. A "development impact fee" under this Code section means:

> a fee or charge imposed by a municipality or by a municipal service agency upon or against a development in order to generate revenue for funding or for recouping expenditures of the municipality or municipal service agency that are reasonably attributable to the use and occupancy of the development.

A.C.A. § 14-56-103(a)(3)(A) (Supp. 2007).

"Development" means "any residential, multifamily, commercial, or industrial improvement to lands within a municipality or within a municipal service agency's area of service[.]." *Id*. at (a)(2).[1]

A "development impact fee" under subsection 14-56-103 only applies to new development. S*ee id*. at (b) (authorizing the assessment of such a fee "to offset costs…that are reasonably attributable to providing necessary public facilities to

[1] A "municipal service agency" is defined as: "(A) Any department, commission, utility, or agency of a municipality, including any municipally owned or controlled corporation; (B) Any municipal improvement district, consolidated public or municipal utility system improvement district, or municipally owned nonprofit corporation that owns or operates any utility service; (C) Any municipal water department, waterworks or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.; (D) Any municipal wastewater utility or department; (E) Any municipal public facilities board; or (F) Any of these municipal entities operating with another similar entity under an interlocal agreement in accordance with § 25-20-101 et seq. or § 25-20-201 et seq.[.]" A.C.A. § 14-56-103(a)(5) (Supp. 2007).

new development."). *See also* (a)(1) and (e)(2) (requiring a "capital plan" and defining "capital plan" as "a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available to new development that includes cost estimates and capacity available to serve new development."). It also bears noting that a city "may assess" such a fee. *Id*. at (b). A "development impact fee" is an optional means of financing public facilities costs that are attributable to new development. If such a fee is imposed, however, it must be assessed and collected "in reasonable proportion to the demand for additional capacity in public facilities that is reasonably attributable to the use and occupancy of that new development." *Id*. at (d)(1).

I have no information to suggest that the Development Fee under Booneville Ordinance 2007-831 is a "development impact fee" as authorized by A.C.A. § 14-56-103. As noted, the Development Fee is not limited to new development, but instead applies to all users of the Booneville water system. The City has general authority to establish fees for the use of its water system. *See* A.C.A. § 14-234-214 (Repl. 1998). Assuming the reasonableness of the fee, *see generally City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993) and Op. Att'y Gen. 2001-396, it appears that the Development Fee was properly enacted, and that it is unaffected by A.C.A. §14-56-103.

Assistant Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:EAW/cyh