

Opinion No. 2012-102

August 23, 2012

The Honorable Homer Lenderman
State Representative
195 County Road 953
Brookland, Arkansas 72417

Dear Representative Lenderman:

This is my opinion on your question about Act 769 of 2003.¹

The act provides that one municipal utility system² can cause another to deny water to a person who moves from the former's territory to the latter's, if the person is undisputedly delinquent in payment of money owed to the old system:

If a person who is delinquent on the payment of an undisputed bill for water service . . . provided by a water system . . . moves . . . and . . . applies for or receives water from another water system, if the person's former water system establishes that there is no dispute that the delinquent amount is properly due and owed by that particular individual in that amount, the new water system shall refuse to provide water service . . . until the person provides proof of curing the delinquency.

A.C.A. 14-234-603.

You have asked whether the new system may provide water until a court determines that the bill is delinquent. In my opinion, the answer is "no."

¹ Codified as amended by Act 360 of 2007 at A.C.A. §§ 14-234-601 to -605 (Supp. 2011).

² The act applies to municipal and other water, wastewater, and sewer systems but not to systems that are regulated as public utilities by the Arkansas Public Service Commission. *See* A.C.A. §§ 14-234-601(2), -604; 23-1-101(9)(A)(ii) (Repl. 2002).

The answer to your question depends on the act's meaning, determined under familiar rules:

When construing a statute, we interpret the statute to give effect to the intent of the General Assembly. We determine legislative intent from the ordinary meaning of the language used where the language of the statute is plain and unambiguous. Words in the statute are given their ordinary and usually accepted meaning in common language.

Broussard v. St. Edward Mercy Health System, Inc., 2012 Ark. 14, *4, ___ S.W.3d ___, 2012 WL 149761.

The act provides that the new system “shall refuse” service if the old system “establishes that there is no dispute that the delinquent amount is properly due and owed by that particular individual in that amount” A.C.A. § 14-234-603.

I take these words to mean that an old system desiring a new system's cooperation in collecting a delinquent account must demonstrate or prove³ (“establish”) the fact described. The law does not expressly state to whom the old system should make this showing, but obviously it is the new system, the party whose conduct the act constrains. The act does not, in my opinion, require the old system to make any showing to a court, or to the new system through a court. The old system is not required to show that its claim against the customer has been reduced to judgment, only that the delinquent amount is undisputedly owed.

Your request states that a new municipal water system has cited the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)⁴ in refusing to disclose whether an old system's delinquent customer is now a customer of the new system. Reliance on HIPAA is misplaced. The HIPAA privacy rule binds health plans, health care providers, and healthcare clearinghouses, and governs their dealings with protected health information. *See generally* 45 CFR Parts 160,

³ *New Shorter Oxford English Dictionary* 853 (Lesley Brown ed., 1993) (defining “establish” to mean “[p]lace beyond dispute; ascertain, demonstrate, prove”).

⁴ Pub. L. 104-191.

The Honorable Homer Lenderman
State Representative
Opinion No. 2012-102
Page 3

164. A municipal water system is not an entity covered by the HIPAA privacy rule and would not be expected to possess health information about a customer. As did my predecessors, I have opined that, absent constitutional privacy concerns, a municipal water system must disclose account information, including customers' names, under the Freedom of Information Act.⁵ *See* Op. Att'y Gen. 2009-060, 2007-192, and opinions cited therein. Likewise I have opined that water service account information is normally not the sort of extremely personal information that would be protected from disclosure on constitutional grounds. *See id.*

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

⁵ A.C.A. §§ 25-19-101 to -110 (Repl. 2002, Supp. 2012).