



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-006

March 13, 2015

The Honorable John Baine
State Representative
Post Office Box 10056
El Dorado, Arkansas 71730-0022

Dear Representative Baine:

This is in response to your request for my opinion on the following question:

May a city use city general funds to pay for water and sewer upgrades to the city system that includes customers inside and outside the city limits?

RESPONSE

This question does not lend itself to a simple “yes” or “no” because the answer will depend upon an analysis of the particular surrounding facts. While I consequently cannot offer a definitive response to your inquiry, I will review some of the generally applicable law in an effort to assist in framing the relevant legal and factual issues.

As an initial matter, according to my review of the various statutes that may bear on this question, the analysis is essentially the same regardless of whether the city’s water or sewer system includes both resident and nonresident customers. Accordingly, if the concern is that the city may be foreclosed from using general funds for “upgrades”¹ based upon the fact that the system services nonresidents, I

¹ I have no information regarding the particular water or sewer works that might be contemplated by this question. I will assume for purposes of this opinion, however, that the term “upgrades” refers generally to “improvements.”

believe that concern is unfounded. The same basic principles come into play when addressing the matter of funding the cost of serving those inside and outside city limits.²

The law generally contemplates that the rates for resident and nonresident consumers of a municipal waterworks or sewer system will be sufficient to pay for installing and maintaining the system.³ The statutes governing municipal waterworks systems provide in relevant part:

(a) Rates for resident and nonresident consumers of a municipal waterworks system shall be fixed by the legislative body of the municipality.

(b) *The rates to be charged by the municipality must be adequate to:*

* * *

(3) Provide an adequate depreciation fund and to *provide the operating authority's estimated cost of operating and maintaining the waterworks system.*⁴

The statutes applicable to municipal sewage systems similarly provide:

(a) (1) The council of the municipality shall have the power, and it shall be its duty, by ordinance to establish and maintain just and equitable rates or charges for the use of and the service rendered by

² It should nevertheless be noted that pursuant to A.C.A. § 14-234-110(a)(3) (Repl. 1998), “[w]ater may be supplied to nonresident consumers at such rates as the legislative body of the municipality may deem just and reasonable, and the rates need not be the same as the rates charged residents of the municipality.” For a discussion of the general guiding principles respecting a potential rate differential in this regard, see Ark. Op. Att’y Gen. 2002-230 (available at www.arkansasag.gov).

³ Municipalities have the option of extending water and sewer service to consumers outside their corporate limits. A.C.A. §§ 14-234-110 and -111 (Repl. 1998). See also *City of Little Rock v. Chartwell Valley Limited Partnership*, 299 Ark. 542, 772 S.W.2d 616 (1980).

⁴ A.C.A. § 14-234-214 (Repl. 1998) (emphasis added).

the works, to be paid by each user of the sewerage system of the municipality....

(b) The rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements, and maintenance of the works....⁵

A statute addressed specifically to servicing areas outside corporate limits also similarly contemplates rates being sufficient to cover the cost of the extension:

Any municipality in the State of Arkansas owning and operating a municipal waterworks system or a municipal sewer system or both may extend its service lines beyond its corporate limits for the purpose of giving water service, sewer service, or both, to adjacent areas where the demand for services is sufficient to produce revenues that will retire the cost of such service lines....⁶

As a general rule, based on these statutes, a city is expected to fund its water and sewer systems through system revenues. However, these statutes do not, in my opinion, impliedly proscribe devoting general revenues to those systems. Assuming that rates have been set in good faith, based on the “estimated cost” of the water system⁷ and “reasonable expense” of the sewer system,⁸ I see no reason to think a city is generally foreclosed from using its general funds for improvements. As indicated above, I believe this conclusion pertains regardless of whether the improvements will benefit customers inside or outside city limits.

I cannot opine further because the specific facts will ultimately be controlling of any issues surrounding the funding of a city’s water or sewer system. While I am unable to definitively answer your question, the foregoing will hopefully be of

⁵ A.C.A. § 14-235-223 (Repl. 1998) (emphasis added).

⁶ A.C.A. § 14-234-111(a) (Repl. 1998) (emphasis added).

⁷ A.C.A. § 14-234-214(b)(3), *supra*.

⁸ A.C.A. §14-235-223(b), *supra*.

assistance in identifying what I believe are the most relevant general guiding principles in this area of the law.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'LR', is written over a faint, light blue rectangular stamp.

LESLIE RUTLEDGE
Attorney General

LR/EAW:cyh