

**LETTER OPINION
2014-L-16**

December 29, 2014

Mr. Bryan Van Grinsven
Attorney for West River Water District
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PO Box 998
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Ms. Rozanna C. Larson
Ward County State's Attorney
PO Box 5005
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Dear Mr. Van Grinsven and Ms. Larson:

Thank you for your letter requesting my opinion on whether Ward County must pay a \$2,500 "disconnect permit fee" to the West River Water District on properties Ward County acquired after the 2011 flood to restore to green space. Based on the following, it is my opinion that Ward County has no duty to pay a \$2,500 "disconnect permit fee" to the West River Water District on properties Ward County acquired after the 2011 flood to restore to green space.

FACTS

The following facts are provided in your request letter:

In March 2005, the West River Water District (hereafter "Water District") financed the repair and update of two lift stations providing service to properties within the Water District through the issuance of revenue bonds. The loan does not mature until 2024. The Water District imposed an additional monthly fee of \$14.95, to be paid by property owners/users who contracted with the Water District for water and sewer services. This amount was determined based upon the number of users and the length of the bond at the time of the issuance of the bond. This fee was charged to all property owners/users

connected to the Water District's water and sewer systems, regardless of the actual amount of use.

In June 2011, homes and properties in Ward County, including areas within the Water District, suffered substantial damage due to the flooding of the Mouse River. Water and sewer services to the properties impacted were shut off at the curb stop and never reconnected. In October 2011, the Water District sent out a letter to all its users. The letter indicated that even if they were not in their homes and the water was shut off at the curb stop, they would need to continue to pay the \$14.95 monthly fee.

Ward County, as part of an effort to protect properties from future flooding, began a Voluntary Acquisition of Real Estate Program (hereinafter "Program") in 2012. Properties acquired by Ward County under the Program are set to be demolished and the area restored to green space. Some of the properties acquired through this Program remained disconnected from water and sewer service from the Water District. Under this Program, the purchase agreement with each property owner specifically states that the Seller is responsible for payment of all utility expenses incurred prior to the date of possession by Ward County.

Ward County sent out notices between May 2013 and September 2013 to all the utilities the week of the purchase to disconnect services, if services were being provided. The notice included notice that the property would be demolished at a future date and the area restored to green space. Ward County is now moving to the demolition phase of the Program.

On May 18, 2013, the Water District's Board adopted a new policy in which owners/users would be required to purchase a disconnect permit fee of \$2,500. On May 21, 2013, the Water District notified Ward County of the new disconnect permit fee.

ANALYSIS

As stated in the facts, the Water District had contracts with the property owners/users for water and sewer services. Ward County's purchase agreements with the property owners state that the owner is responsible for the payment of all utility expenses incurred prior to possession by Ward County. In a court case where a city alleged the purchaser of a property must pay the unpaid water bill of the previous owner, the court stated:

The plaintiffs were not liable for the water bill, which was not contracted for by them or known to them. They were under no more obligation to pay it than they were to pay other bills of any other persons. . . . The person who was liable for the bill was . . . [the person who] was in possession during the time the obligation was contracted, and used the water which gave rise to

the bill. We can see no such benefits accepted by plaintiffs that would make them liable for a bill incurred prior to their obtaining an interest in the premises.¹

Similarly, Ward County has never had a contract with, nor been connected in any way to, the Water District for services. Thus, the Water District cannot bind Ward County to a contract it had with the past owners/users of these properties.

Also “absent a lien [on the property], . . . hold[ing] a tenant liable for the water debts of a prior occupant, is unreasonable and void.”² There is no provision in state law which creates a lien for unpaid water or sewer charges imposed by a water district. Thus, Ward County, the purchaser of these properties, is not obligated to pay the disconnect permit fee, the purpose of which appears to be to assist in paying off the Water District’s bonds.

In conclusion it is my opinion that Ward County has no duty to pay a \$2,500 “disconnect permit fee” to the West River Water District on properties Ward County acquired after the 2011 flood to restore to green space.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.³

¹ Cocanig v. City of Chicago, 173 N.E.2d 482, 484 (Ill. 1961).

² Oliver v. Hyle, 513 P.2d 806, 810 (Or. App., 1973). See also Graines v. Fleeter, 507 N.E.2d. 376 (Ohio App. 1985).

³ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).