

N.D.A.G. Letter to Enget (Sep. 10, 1986)

September 10, 1986

Mr. Wade G. Enget
Tioga City Attorney
P.O. Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your letter of September 2, 1986, inquiring as to the rights of the city of Tioga to set water user or hookup fees.

My review of the applicable statutes of the North Dakota Century Code indicates that a city clearly has the authority to assess a user charge or fee for the use of water. N.D.C.C. § 40-05-01(36) provides the city may fix and regulate the rates, use, and sale of water. Furthermore, N.D.C.C. § 40-22-16 authorizes the governing body of a city to establish, impose, and collect service charges for services furnished by water improvements. Finally, for those cities owning and operating a water treatment plant, N.D.C.C. § 40-33-19 authorizes said cities to establish and maintain special rates and charges for the services of said plant "over and above its regular water rates" sufficient to produce revenues adequate to make all of the payments on bonds or certificates needed to pay for the operation of such a plant.

Although it can be said that a city clearly has several legal bases by which it may assess a water service fee, the statutes are silent as to the ability of a city to make distinctions in establishing those fees between the types of consumers of the water within the city limits. Thus, I cannot cite to you a particular statute authorizing a city to set a separate schedule for water use depending upon the type of customer using the water. Instead, it would be my suggestion that a city avoid arbitrary or capricious amounts and inquire as to whether there is a rational basis supporting the differing schedules for the different types of customers.

Sincerely,

Nicholas J. Spaeth

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