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Legal Opinion 2016-008

TO: Mayor John Engen, City Council, Dale Bickell, Ginny Merriam, Steve Johnson, Leigh Griffing, Scott Paasch, John Wilson, Carla Krause, Lori Hart, Marty Rehbein, Kirsten Hands, Kelly Elam, Starr Sullivan

CC: Department Attorney

FROM: City Attorney Jim Nugent

DATE March 24, 2016

RE: Montana State Laws require Municipal Public Utility rates or charges to be uniform for all like services reasonable and just and as nearly equitable as possible in proportion to services and benefits rendered

FACTS:

A city council public works item on Wednesday afternoon March 23, 2016 was a proposed water utility ordinance to be scheduled for future public hearing. There were some initial city council member inquiries concerning the water rates to be charged by the City of Missoula for a public water utility owned by the City of Missoula. The City of Missoula has owned and operated a municipal sanitary sewer public utility as well as stormwater public facilities for decades. The City of Missoula sanitary sewer public utility currently serves more than 1,600 real properties located outside the Missoula city limits. Obviously, the City of Missoula has had decades of experience providing municipal public utility service to properties located outside the city limits.

ISSUE(S):

What does Montana state law provide with respect to the monetary amount of municipal public utility rates or charges?

CONCLUSION(S):

Montana state law, pursuant to sections 7-13-4304 and 69-7-101 MCA, provides that municipal public utility rates or charges must be uniform for like services in all parts of the municipality, reasonable and just and as nearly equitable as possible taking into account the services and benefits rendered.

LEGAL DISCUSSION:

Montana state laws pertaining to municipal public utilities generally provide that municipal public utility rates and charges must be uniform for all like services in all parts of the municipality, reasonable and just and as nearly as possible equitable in proportion to the services and benefits rendered.

Title 7, chapter 13, part 43 Montana Code Annotated (MCA) is entitled "MUNICIPAL SEWAGE AND/OR WATER SYSTEMS". Also, title 69, chapter 7 MCA, is entitled "MUNICIPAL UTILITIES" part 1 MCA is entitled REGULATION OF RATES BY MUNICIPALITY"

Section 7-13-4304 MCA is entitled "AUTHORITY TO CHARGE FOR SERVICES" and statutorily requires that rates and charges be uniform for like services and as nearly as possible equitable in proportion to the services and benefits rendered. Section 7-13-4304 MCA states as follows:

7-13-4304. Authority to charge for services.

- (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.
- (2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.
- (3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.
- (4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

Section 7-13-4305 MCA is entitled "CONSUMERS REQUIRED TO PAY FOR SERVICES". Section 7-13-4305 MCA requires that all persons, firms, or corporations pay the full and established rate for the municipal public utility. Section 7-13-4305 MCA provides:

7-13-4305. Consumers required to pay for services.

- (1) No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

(2) No person may have service reestablished after it is discontinued pursuant to 7-13-4306 unless they have paid the full amount past due, any interest or penalty on such past-due amount, and any required reestablishment deposit.

Section 7-13-4307 MCA is entitled "ESTABLISHMENT OF AMOUNT OF CHARGES" and provides as follows:

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system must be sufficient in each year to provide income and revenue adequate for the:

- (1) payment of the reasonable expense of operation and maintenance;
- (2) payment of the sums required to be paid into the sinking fund;
- (3) accumulation of reserves;
- (4) payment of rates, fees, and charges levied by a regional authority established pursuant to Title 75, chapter 6, part 3; and
- (5) payment of expenditures for depreciation and replacement of the system as determined necessary by the governing body or as covenanted in the ordinances and resolutions authorizing the outstanding bonds

Section 7-13-4312 MCA is entitled "AUTHORIZATION TO FURNISH WATER AND SEWER SERVICES TO PERSONS LOCATED OUTSIDE MUNICIPALITY". This section requires that the City provide municipal utility services outside the city limits "at reasonable rates".

Sections 69-7-101 MCA entitled "MUNICIPAL UTILITIES-REGULATION BY MUNICIPALITY" requires that municipal public utility rates, charges and classifications "must be reasonable and just". Section 69-7-101 MCA states as follows:

69-7-101. Municipal utilities -- regulation by municipality. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just.

Section 69-7-111 MCA entitled "MUNICIPAL RATE HEARING REQUIRED-NOTICE" sets forth the statutorily required process for notice and a public hearing for a municipal public utility. Section 69-7-111 MCA states as follows:

69-7-111. Municipal rate hearing required -- notice. (1) Except as provided in 75-5-516, 75-6-108, and subsection (6), if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing must be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice must be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior

to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

- (a) the date, time, and place of the hearing;
- (b) a brief statement of the proposed action; and
- (c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

(6) (a) If the proposed increase in the rates, fees, or charges imposed by the municipality is the result of the establishment of or change in rates, fees, or charges imposed by a regional authority of which the municipality is a customer and the authority is required to hold a public hearing pursuant to 75-6-326, the governing body of the municipality shall:

- (i) mail notice of the public hearing to be held by the authority to all persons served by the municipality at least 15 days before the public hearing; and
- (ii) provide notification to all persons served by the municipality at least 10 days prior to the enactment of the ordinance or adoption of the resolution implementing the increase.

(b) The municipality is not required to hold a public hearing in connection with the increase.

(7) If a regional authority is not required to hold a public hearing as provided in 75-6-326(9), the municipality is subject to the hearing requirements of this section.

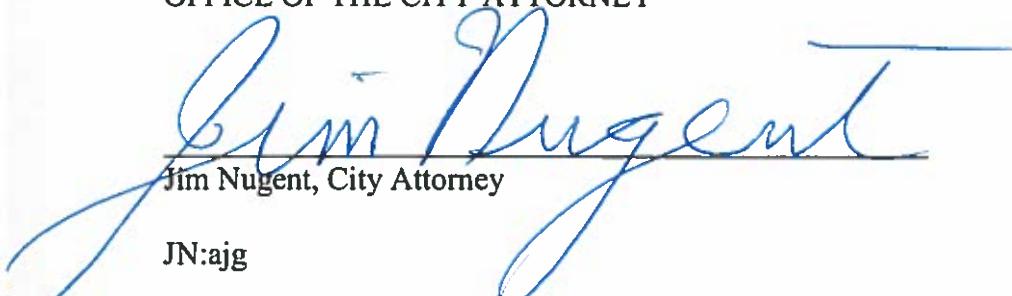
Note that pursuant to section 69-7-111 MCA a municipal public utility must provide mail notice of the public hearing pertaining to municipal public utility rates, charges and classifications to each person served by the municipal public utility. Pursuant to Montana Public Service Commission review of Mountain Water Company, there is no state law that requires that Mountain Water provide mail notice to each person served by Mountain Water Company. Thus, Montana municipal utilities are required to provide more direct notice to persons served by their respective municipal public utility, than a privately owned utility is required to provide. See subsection 69-7-111(3)(b) and (6)(a)(i)MCA quoted above.

Also, note that pursuant to subsection 69-7-111(5) MCA Montana municipal public utilities must also provide first class mail notice of a public hearing pertaining to municipal public utility rates, charges and classifications to the Montana Consumer Counsel. Thus, the Montana Consumer Counsel continues to have an opportunity to be informed of, provide review and comment on and attend municipal public utility rate, charges and classifications public hearings.

CONCLUSION(S):

Montana state law, pursuant to sections 7-13-4304 and 69-7-101 MCA, provides that municipal public utility rates or charges must be uniform for like services in all parts of the municipality, reasonable and just and as nearly equitable as possible taking into account the services and benefits rendered.

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