

WATER SUPPLY DISTRICTS:

A public water supply district organized under Chapter 247, RSMo, cannot charge a property owner or the tenant of real property for delinquent water bills of former tenants.

OPINION NO. 196

September 4, 1973

Honorable Vernon King  
Representative, District 16  
2007 East Ridge Drive  
Excelsior Springs, Missouri



Dear Representative King:

This is in response to your request for an opinion from this office as follows:

"Can Public Water District No. 2 in Ray County charge a property owner or the tenant of real property for delinquent water bills of former tenants.

"Public Water District No. 2, Ray County, whose offices are located in Richmond, Missouri, are charging the property owner or the future tenant for any and all delinquent water bills of former tenants."

Chapter 247, RSMo, provides for the establishment of public water supply districts. Section 247.020, RSMo, provides that when the districts are formed they shall be known as public water supply districts of the counties in which the districts are located and shall be political corporations of the state of Missouri and shall be invested with all the powers conferred upon them by the provisions of this chapter. Section 247.050, RSMo, provides that they shall have the following powers provided therein including:

"The following powers are hereby conferred upon public water supply districts organized under the provisions of sections 247.010 to 247.220:

\* \* \*

Honorable Vernon King

(14) To provide for the collection of taxes and rates or charges for water and water service;

(15) To sell and distribute water to the inhabitants of the district and to consumers outside the district, delivered within or at the boundaries of the district;

(16) To fix rates for the sale of water;  
and

(17) To make general rules and regulations in relation to the management of the affairs of the district."

Section 247.110, RSMo, provides for the fixing of rates or charges for water or water service furnished by the district to be vested in a board of directors. The rates or charges to be fixed shall at all times be reasonable and the board shall take into consideration the sum or sums required to retire outstanding special obligation bonded indebtedness, the need for extension of mains, repairs, depreciation, enlargement of the plant, adequate service, obsolescence, overhead charges, operating expenses, and the need of an operating fund which the district may need in emergencies.

Section 247.120, RSMo, provides for the board of directors to make estimates of the amount of taxes required to be levied to provide for the purposes of the district as specified in this chapter.

Under these statutes, the establishing and operating expenses of the district are to be maintained by taxes as well as by service charges for the water that is used and furnished to its customers.

In your opinion request, you inquire whether the property owner or the future tenant can be charged or held liable for unpaid water bills of former tenants; and we assume you want to know whether the water district has authority to refuse water service or disconnect for nonpayment of such charges.

We are unable to find any statutory provision authorizing the property owner or the tenant to be charged for delinquent water bills of the prior property owner or prior tenant.

A municipality or a private concern supplying water to the public may prescribe and enforce a rule or regulation which provides for shutting off the water supply from a consumer who has

Honorable Vernon King

defaulted in the payment of the same. Mulrooney v. Obear, 171 Mo. 613, 71 S.W. 1019 (Mo. 1903); McDaniel v. The Springfield Waterworks Company, 48 Mo.App. 273 (St.L.Ct.App. 1892).

In 94 C.J.S. Waters §305, the general rule of law is that payment of lawful water charges by the consumer may be enforced by shutting off water when bills are overdue and refusing to furnish water until they are paid. The general rule of law, as stated therein, in regard to shutting off the water for nonpayment of bills incurred by one other than the current occupant or consumer of the premises, is stated as follows:

"A municipality or water company cannot resort to cutting off the water supply as a means of collecting bills left unpaid by a former tenant, occupant, or owner of the building, in the absence of a statute expressly authorizing it or making the arrearages a lien on the lands; or of contractual authority, although it may do so where such a statute or lien exists, but not where a lien once had has been lost. In other words, no right exists to cut off the water supply to compel payment of a bill which it is not the duty of the consumer to pay. So, a company's rule that service might be discontinued if the water rates are unpaid for a specified period makes the new owner of property liable for service rendered while the property is owned by him, but not for service rendered while the property was owned by the prior owner.

"Except where there is a statute making the charge a lien on the premises, a tenant cannot be denied water service because the landlord is in arrears, and the tenant need not, in such case, pay the arrears of the landlord as a condition to water service; nor may an owner be refused water for failure of a tenant to pay his bill where the owner has not guaranteed payment.

"Where the discontinuance of service for nonpayment of another's arrearages is authorized, the water may not be shut off unless the consumer had notice that he would be required to pay. The right to shut off the water for nonpayment of another's bills, where it exists,

Honorable Vernon King

is not waived by the failure of the city to exercise its statutory right to require a deposit for the payment of the bills."

In Vanderberg v. Kansas City Missouri Gas Company, 105 S.W. 17 (K.C.Ct.App. 1907), the plaintiff sued the Kansas City Gas Company, a private utility, for damages for shutting off the gas at the apartment rented by plaintiff's husband and where the family lived. The gas company undertook to furnish gas service but later discovered plaintiff's husband was delinquent in gas bills for gas service furnished at the place of business which her husband operated. The franchise from the city gave the gas company the right to shut off the gas for any consumer who was in arrears for more than 15 days for gas service. The gas company then shut off the gas at the apartment that was rented by plaintiff's husband. Plaintiff petitioned the gas company to furnish service to her at this apartment which they refused to do and as a result this suit was instituted. The court held that plaintiff was not the tenant of the premises and not entitled to have gas service furnished to the apartment which was rented in another person's name. In discussing the rights of a public utility to refuse service because of delinquent bills owed by other persons, the court stated, l.c. 608:

"And, further, on the hypothesis that plaintiff had come to defendant as the tenant of premises where she desired to consume gas, defendant had no right to compel her to pay the debt of another as a condition without the performance of which it would not supply her. The provision in the charter by which defendant could discontinue service to a delinquent customer is a reasonable regulation and, therefore, one which the courts will enforce. Compelling applicants to deposit a sufficient amount of cash to guarantee the payment of monthly bills likewise is a reasonable regulation. The company either would have to go out of business or else increase the rates charged to paying consumers to meet the loss of revenue from the failure of others to pay if it could not legally protect itself against such loss, by requiring cash deposits and by stopping its service to delinquents. But there is no more reason for compelling a married woman to pay her husband's debt, for the payment of which she is not legally bound, than there would be for compelling her to pay the debt of a stranger. The attempt made by

Honorable Vernon King

defendant to coerce her into paying such debt was unreasonable and her failure to submit to such coercion afforded no lawful excuse for defendant's refusal to enter into a contract with her."

The general rule as to liability of the occupant or owner of the premises for unpaid charges for utilities furnished third persons is stated in 19 A.L.R.3d 1232-1233 as follows:

"Municipalities and public utility companies have frequently sought reimbursement of unpaid charges for utilities from the property served itself, or someone connected with the property, such as an occupant or owner, other than the one who incurred the charges. The conventional rule has been that liability for the debt of another cannot be imposed in the absence of special agreement or statutory authorization for a lien on the property, and ordinances or regulations seeking to impose such liability have usually been held unreasonable in the absence of an authorized lien. In numerous cases the courts have recognized that in the absence of a lien authorized by statute or special agreement, there can be no imposition of liability, for utility charges incurred, upon one other than the user or one who contracted for the supply."

Numerous cases of the courts in other states are cited in support of this rule.

In City of Maryville v. Cushman, 249 S.W.2d 347 (Mo. banc 1952) the court held a statute, and an ordinance incorporating it, providing that the owner of premises occupied by a tenant is liable with such tenant for charges for water services, and that the city may sue the occupant or owner or both to recover any sums due for such services, without imposing a lien on the property, did not deny due process of law, the court reasoning that an owner is charged with notice of a statute and ordinance to the above effect, and that the obvious theory was that the obligation of the owner rested upon a contract implied from the fact that he connects his real estate with water facilities of the city and permits the occupant to so use the real estate.

In the above case, a decision was based on what is now Section 250.140, RSMo, which provides as follows:



Honorable Vernon King

"Sewerage services or water and sewerage services combined shall be deemed to be furnished to both the occupant and owner of the premises receiving such service and the city, town or village or sewer district rendering such services shall have power to sue the occupant or owner, or both, of such real estate in a civil action to recover any sums due for such services, plus a reasonable attorney's fee to be fixed by the court."

This section has no application to water supply districts and we find no statute giving a water supply district power to recover from the owner or future tenant for delinquent bills of former tenants.

It is our view that under the above-statutory provisions and court decisions cited herein, a public water supply district organized under Chapter 247, RSMo, cannot charge a property owner or the tenant of the property for delinquent water bills of the owner or former tenants.

#### CONCLUSION

It is the opinion of this office that a public water supply district organized under Chapter 247, RSMo, cannot charge a property owner or the tenant of real property for delinquent water bills of former tenants.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH  
Attorney General