

**LETTER OPINION
2000-L-174**

December 4, 2000

Senator Pete Naaden
P.O. Box 53
Braddock, ND 58524

Dear Senator Naaden:

Thank you for your letter asking whether the city of Linton, which has a home rule charter, can charge a late fee of 10% on the amount of a quarterly water bill remaining unpaid ten days after it is due. You also ask whether the city has the power to charge more than the late fee allowed under N.D.C.C. § 13-01-14.

The imposition of a late fee on a Linton water bill does not implicate its home rule charter. Linton's home rule charter essentially allows it to supersede state law only to impose a retail sales and use tax of up to 1% subject to certain exemptions dedicated to capital improvements and economic development. This is permitted under N.D.C.C. § 40-05.1-06(16).

N.D.C.C. § 40-05.1-06 affirms that state statutes regarding cities generally "so far as applicable, shall continue to apply to home rule cities, except in so far as superseded by the [home rule] charters of such cities or by ordinance passed pursuant to such charters." "In addition to the powers included in its home rule charter, [Linton] has the general powers granted to a city. See Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988) (finding that a home rule city without specific authority under its charter and ordinances has the authority given by the Legislature to all cities)." 1997 N.D. Op. Att'y Gen. L-155 (Sept. 26 to Stephen M. McLean). No provision in the Linton home rule charter supersedes the specified powers that all cities have under N.D.C.C. ch. 40-05.

A city generally has power to establish a waterworks system and "fix and regulate rates, use and sale of water." N.D.C.C. § 40-05-01(36) See also N.D.C.C. §§ 40-05-01(2) (giving cities the power "to establish charges for any city or other services"); 40-05-02(17), (18), (19) (permitting cities to establish a water supply and acquire real and personal property to maintain and conserve its water supply); 40-33-01(5) (giving cities the power to establish a waterworks and water distribution system pursuant to N.D.C.C. ch. 40-33 concerning municipal utilities). Thus, pursuant to the forgoing statutes applicable to all cities, the city of Linton has authority to fix and regulate rates and charges for the sale of water.

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N.D.C.C. § 13-01-14 provides that any creditor who did not intend to extend credit beyond 30 days may charge a late charge, a maximum of 1¾ (1.75) percent per month or 21% per annum on money due on account. This section was addressed in an opinion to the Hillsboro city attorney on May 27, 1986. Letter from Attorney General Nicholas Spaeth to John Juelson (May 27, 1986).

As the Juelson opinion pointed out, prior to an amendment, effective July 1, 1985, N.D.C.C. § 13-01-14 specifically exempted residential utility bills from its coverage. Since it is not defined by statute, the common meaning of the word utility is to be used. N.D.C.C. §§ 1-02-02, 1-02-03; Kim-Go v. J.B. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). Utility is defined as "[a] public service such as gas, electricity, water, or transportation." The American Heritage Dictionary 1331 (1991 2d ed.) The exemption was terminated by the 1985 Legislature and therefore city residential water utility bills are subject to the provisions of N.D.C.C. § 13-01-14. Juelson letter, supra. However, a creditor may only charge the late payment charge if it complies with the periodic statement requirement in N.D.C.C. § 13-01-15. Furthermore, the late payment fee may not be imposed until thirty days (not ten) after the obligation has been imposed. N.D.C.C. § 13-01-14-(1).

The Juelson opinion indicates that a city may not assess a late charge of more than 1¾% per month, on money due on account and there is no statutory provision authorizing a city as an unregulated lender to charge a higher rate as a late payment charge for utility services.

If the city does not fully comply with both N.D.C.C. §§ 13-01-14 and 13-01-15 to entitle it to charge the maximum rate authorized therein, it may still be entitled to interest at a rate prescribed by written contract or the statutory rate of 6% under N.D.C.C. § 47-14-05. A written contract agreeing to charge interest would be limited to the rate provided in N.D.C.C. § 47-14-09. See Royal Jewelers, Inc. v. Kopp, 365 N.W.2d 525, 527 (N.D. 1985).

Sincerely,

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Attorney General

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