



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 23, 1975

Opinion No. 75- 179

Mr. R. C. Cunningham
City Clerk of Quinter
Quinter, Kansas 67752

Dear Mr. Cunningham:

We have your second letter, posing specific questions concerning Ordinance No. 267 of the City of Quinter, which establishes water rates for customers, penalties for delinquencies and other violations, tap-in charges, charges for multiple use from the same tap-in and water meter, and other requirements deemed necessary.

Section 4 provides in pertinent part thus:

"Each residence, each Business Building, each Building occupied exclusively by Offices and each Public building shall be supplied with water from a separate water meter and a separate tap-in and charged as one unit, subject to the following regulations:

(A) Outbuildings shown to the satisfaction of the Mayor and Council to be used as a part of such Residence, Business Building, Office Building or Public Building, may be supplied with water from the same water tap-in and water meter without extra charge.

(B) The following multiple unit arrangements may be supplied through one water tap-in and through one water meter, but shall be charged the minimum monthly rate for each unit receiving water through such tap-in and meter, and charges for all water received through said meter shall be billed to such meter without proration;

(1) A Duplex, (2) Apartment, (3) Any Building occupied by Two or more Businesses, (4) Any Building occupied as a Business and an Independent Office Rental, (5) Any Building occupied as a business building and as a Living Unit, (6) Residential Premises occupied as a

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Residence of the Owner and by Rental Apartments, whether in the same building or separate buildings, (7) Motels and Hotels, if they have Rental Apartments."

Section 5 provides thus:

"Residences and Trailer Houses may be supplied with water by the same water tap-in and the same water meter, HOWEVER, each Trailer House so supplied shall be charged the minimum monthly rate for such water. The meter through which the Trailer House or Houses receives such water shall be allowed an additional Three Thousand Gallon Minimum for each Trailer House so served."

You question whether, if two or more customers are receiving water service through the same water meter and the same tap-in, the city may lawfully impose the additional charge based on such multiple users. Specifically, you cite an instance in which a customer with one water meter at his residence supplies two trailer homes from the same meter. He argues that the city has no authority to charge for the trailer houses because there is only one water meter.

This question was considered in City of Kermit v. Rush, 351 S.W.2d 598 (Tex.Civ.App. 1961), in which there was challenged an ordinance which provided that each separate house, residence, apartment building, structure, trailer house and/or mobile home shall have a separate meter or pay a separate monthly minimum charge for water. Apartment house operators and trailer park owners objected that they were being discriminated against, in that they were required to pay minimum water rates for each unit, whereas one minimum water rate was assessed against such businesses as hotels and motels. It was objected that the ordinance was discriminatory on the further ground that in any case where there was one meter, whether it be an apartment house or a hotel, the cost to the city of furnishing service was the same, and for this and other reasons, the ordinance was deemed arbitrary and unreasonable. The court rejected their arguments, citing an earlier case, Caldwell v. City of Abilene, 260 S.W.2d 712 in which the court stated thus:

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"It is well established that a municipal corporation operating its water works or other public utility has the right to classify consumers under reasonable classification based upon such factors as the cost of service, the purpose for which the service or product is received, the quantity or amount received, the different character of the service furnished, the time of its use or any other matter which presents a substantial difference as a ground of distinction."

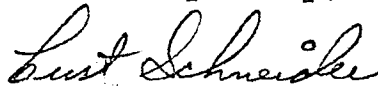
The court further stated thus:

"The unquestioned weight of authority in other states is that a city may classify its users on the basis of a family or business unit and base its charge for the service upon such unit, and may make a minimum charge for each such unit."

From your letter, it does not appear that any objection of discrimination has been raised, but merely that the city may not lawfully base a water charge upon the number of users served by a single meter. This requirement is neither unreasonable nor arbitrary, in our judgment, and there is ample precedent for upholding such provisions for fixing water rates.

I hope this will be helpful to you.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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