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Can Blytheville, Arkansas Water Department Impose Late Fees on Water Bills?: Arkansas Supreme Court Opinion

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The Arkansas Supreme Court ("Court") addressed in a December 17th opinion whether the City of Blytheville, Arkansas' Water Department ("Blytheville") could impose late fees on overdue customer accounts. See *Kenyghatta Davis, et al. v. City of Blytheville, Arkansas, and its Water Department*, 215 Ark. 482.

The Mississippi County Circuit Court had rejected challenges to the imposition of late fees granting Blytheville Summary Judgment.

Plaintiff Kenyghatta Davis, individually and as a representative of a class, had argued in the lower court that water bill late fees were improper for two reasons:

- There is no statutory authority allowing Blytheville to impose late fees; charging of late fees on overdue accounts was an ultra vires act.
- Charging late fees was usurious and an unreasonable and unconscionable penalty.

The Court upheld the Mississippi County Circuit Court's granting of Summary Judgment.

The Court notes that in 2009 Blytheville enacted an ordinance providing:

Bills are to be rendered monthly for residential, commercial, industrial and municipal accounts. Customers paying by the due date shall pay the net amount as shown on the bill. Payments received after the due date shall be charged a 10% late fee. After fifteen (15) days, the payment shall be delinquent and service may be disconnected. A twenty (\$20.00) penalty charge will be assessed on all delinquent accounts.

Plaintiff Davis contended on appeal that there was no statutory authority providing Blytheville the authority to assess a late fee unless it first sought judicial relief. Davis further argued that no other Arkansas statute expressly allowed Blytheville to charge a late fee or late penalty.

The Court responded that Arkansas Code Annotated 14-43-602(a) provides that a:

... municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs, including, but not limited to, the power to tax.

The Court listed the various powers municipal corporations have to construct or acquire water works, sell water to private customers, set just and equitable rates for water use, etc. For example, the Court cites Ark. Code Annotated Section 14-235-223(a)(1) which provides a City Council the power “to establish and maintain just and equitable rates or charges for the use of and the service rendered by the works.” It stated that such statute must be read in conjunction with Arkansas Code Annotated Section 14-235-202 which states that the “act, being necessary for the public health, safety and welfare, shall be liberally construed to effectuate its purposes.”

Therefore, the Court stated:

When Section 14-235-223(a)(1) is construed liberally, as Section 14-235-202 instructs, cities have the implied authority to establish a late fee as a “rate or charge” under Section 14-235-223.

Such rate or charge in the form of a late fee was deemed by the Court a necessary and essential part of operations of Blytheville (citing Blytheville’s General Manager’s testimony [i.e., encourages customers to pay on time]).

As to the argument regarding usury and unreasonableness/unconscionability, the Court cited *Hayes v. First National Bank of Memphis*. The *Hayes* Court stated that because the buyer has in his power to avoid the penalty by discharging the debt when it is due, agreements for penalties to induce prompt payment are free from usury.

The Court held that it likewise concluded that late fees are not usurious.

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