

**Opinion No. 59-87**

July 29, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. John M. Lenko City Attorney Las Cruces, New Mexico

{\*145} This is in answer to your recent request for an opinion on:

"Can the City of Las Cruces continue to permit discounts on utility bills," if paid within a certain period after billing?

It is my opinion that your city may continue the practice of discounting subject to the provisions outlined in the following opinion.

Since the utilities in your City are municipally owned, the rates you must charge are made mandatory by Section 14-39-12, N.M.S.A., 1953 Compilation. The pertinent part of the statute reads as follows:

"It is hereby made mandatory upon governing bodies of municipalities issuing public utility revenue bonds, under the provisions of this act, to establish such rates for services rendered by such utility as will create an income sufficient to pay all reasonable expenses of operation and create a net revenue which shall be sufficient to pay interest coupons on said revenue bonds as they shall mature, and to provide a sinking fund which shall be adequate to discharge said bonds as and when they shall mature, . . ."

It further provides that such rates shall be maintained continuously until the bond issue has been fully liquidated.

Your rates must therefore be sufficient to meet this statutory requirement. While it is improbable that all of your consumers would pay their bills within the specified time and thus be entitled to the discount, it is nevertheless within the realm of possibility. It should be noted in passing, therefore, that the rates should be sufficient to meet the statutory requirement after the discount has been deducted.

Section 14-39-13, N.M.S.A., 1953 Compilation, provides a penalty for the governing body of the municipality upon failure to meet the statutory requirement and mandatory rates.

In 43 Am. Jur., § 173, p. 685, it is stated that:

"Allowing a discount for payment before a certain day, or adding a penalty for nonpayment before such time, is not generally regarded as an unreasonable discrimination, at least where the added amount or penalty is not exorbitant or unreasonable."

It is further stated in 43 Am. Jur., § 187, p. 696, that:

"A statute which, in authorizing a municipality to issue bonds and enter into contract for the acquisition and operation of a waterworks and sewerage system for the municipality, authorizes it to fix rates sufficient to meet the interest and principal of the bonds is subject to the restriction that the rates imposed shall be reasonable and subject to review by the court upon the complaint of a consumer."

"It is elementary that a municipal light and water board must justly exercise its conferred powers in the making and enforcing of regulations so as to promote the purpose of its creation in the place at which it is to transact business, and to render the public and its patrons the contemplated service for compensatory, but not excessive, rates, impartially determined, and so as not to improperly {*\*146*} discriminate between different persons or property, or different classes of persons or property." **State v. Board of Water & Light Commissioners**, (Minn.) 117 N.W. 827.

It is my opinion that the discounts to which you refer contribute to the economical and prompt collection of the utility payments and therefore benefit the community which is served by the municipally owned utility.

The burden of the extra payment (for those who do not pay within the prescribed time for the discount) must operate uniformly upon all. The discount must not be so great as to be unreasonable or discriminatory.

It is my opinion that the City of Las Cruces has authority to grant discounts on bills paid within a certain period after billing. However, the City may be subject to judicial review on the question of whether such rates, after the deduction of the discount, are sufficient to meet the requirements.

By B. J. Baggett

Assistant Attorney General