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1. WATER RENTAL—RATE SCHEDULE WHICH PROVIDES FOR REASONABLE MINIMUM CHARGE FOR FIRST 6000 CUBIC FEET OF WATER OR PART THEREOF—USED DURING THREE MONTHS PERIOD—GRADUATED SCALE BASED ON QUANTITIES USED IN EXCESS THEREOF—NOT UNLAWFUL OR DISCRIMINATORY.
2. ADMINISTRATIVE FAILURE OR NEGLECT—FAILURE TO INSTALL METERS ON PREMISES OF EVERY USER OF WATER WHERE WATERWORKS OWNED BY VILLAGE WILL NOT INVALIDATE LAWFULLY ESTABLISHED RATE NOR RENDER IT DISCRIMINATORY.

SYLLABUS:

1. A rate schedule for water rental which provides for a reasonable minimum charge for the first 6,000 cubic feet of water or part thereof used during a three months period and a graduated scale based on quantities used in excess thereof is not unlawful or discriminatory.

2. An administrative failure or neglect, such as a failure to install meters on the premises of every user of water in case of a waterworks owned by a village, will not invalidate a lawfully established rate nor render it discriminatory.

Columbus, Ohio, December 14, 1949

Hon. Charles M. Ham, Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Mr. Ham:

Your request for my opinion reads as follows:

“The Board of Education of the Village of Fayette, Fulton County, Ohio, has requested me to submit to you the following questions.

“On June 24, 1935, the Village of Fayette, Ohio, passed an ordinance, the pertinent portions of which read as follows:

“‘Section 1. That until otherwise hereafter provided, ordained, or ordered by the proper officers of the Village of Fayette, Ohio, the rates and charges to be paid and which shall be paid by each user of water from the municipal waterworks system of said Village shall be the following:

“‘(a) For each three months’ period, or fraction thereof as hereinafter defined, within which water and serv-

ice in connection therewith shall be furnished to any user of water, including the Village of Fayette itself as such user, from said waterworks system, such user shall be charged and shall pay therefor a minimum amount of \$4.50, which shall entitle such user to receive and use (for such user alone and not for another) from said waterworks system within such three months' period or fraction thereof, 6000 gallons of water; and (b) for all amounts of water so used within such three months' period or fraction thereof, over 6000 gallons, such user shall pay additional compensation at rates as follows:

6001 to 12000 gallons—55c per thousand gallons;
12001 to 25000 gallons—50c per thousand gallons;
25001 to 50000 gallons—40c per thousand gallons;
over 50000 gallons—30c per thousand gallons.

“Section 2. All water delivered from said waterworks system to any user thereof shall be measured through a water meter which shall be purchased and owned by the Village of Fayette, Ohio, as a part of said waterworks system, and one of said meters shall be installed for each user of water on the premises to which the water shall be delivered for the user, such installation to be done under the supervision of and in accordance with rules and regulations which shall be established by the Board of Trustees of Public Affairs of said Village.”

“At the present time few customers are metered. Those customers who are not metered pay the flat minimum rate of \$4.50. Those customers who are metered pay according to the amount of water consumed. The Board of Education of the Village of Fayette is one of the metered customers and frequently pays an amount greatly in excess of the minimum amount.

“The undersigned respectfully requests your informal opinion in answer to the following questions:

“1. Does the Village of Fayette, in failing to meter all customers, discriminate against the Board of Education?”

“2. May said Board of Education lawfully pay a water bill based upon the amount of water consumed even though other customers pay a flat rate which may not be in proportion to the amount of water consumed?”

Your letter quotes an ordinance by the village council which fixed the water rates. Section 4357, General Code, provides for the establishment of a village Board of Trustees of Public Affairs in villages where waterworks are located. Section 4361, General Code, reads in part as follows:

“* * * such trustees may assess a water, light, power, gas or utility rent, of sufficient amount, in such manner as they deem most equitable, upon all tenements and premises * * *”

Thus, it would appear that the village Board of Trustees of Public Affairs should establish the rates. However, your question goes to the reasonableness of the schedule of rates, rather than the power to establish them. Therefore, I shall assume for the purpose of answering your question that the rates were lawfully established.

A careful examination of the rate schedule discloses no evidence of discrimination in the provision. It is set up on a minimum rate for a certain amount and on a graduated scale for any excess over the minimum amount. All parties are treated equally. The Board of Education is paying only what the schedule rate calls for. It is possible that the other water consumers of the village are using more water than they are paying for. This is due to the failure to install water meters for all of the consumers. This failure to install water meters can be traced to the administration of the provision and not to the provision itself. It is well established that faulty or negligent administration will not invalidate a lawfully established rate nor render it discriminatory. Further, a statute will not be held unconstitutional merely because it may afford an opportunity for abuse in the manner of application. In 11 Am. Jur. Section 136 at page 802, it states:

“Courts are not at liberty to declare statutes invalid although they may be harsh, unfair, abused and misused, may afford an opportunity for abuse in the manner of application, may create hardships or inconvenience, or may be oppressive, mischievous in their effects, burdensome on the people, and of doubtful propriety.”

I believe this principal would have equal application to the situation at hand.

Thus, the Board of Education must continue to pay water rates established by the proper authorities until the rates themselves are determined to be unfair or discriminatory.

In conclusion, therefore, it is my opinion that a rate schedule for water rental which provides for a reasonable minimum charge for the first 6,000 cubic feet of water or part thereof used during a three months period and a graduated scale based on quantities used in excess thereof is not unlawful or discriminatory. I further believe that an administrative

failure or neglect, such as a failure to install meters on the premises of every user of water in case of a waterworks owned by a village, will not invalidate a lawfully established rate nor render it discriminatory.

Respectfully,

HERBERT S. DUFFY,

Attorney General.