

1980 WL 120697 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 4, 1980

*1 Harry O. Shaw, III, Esquire
Goose Creek City Attorney
Suite 101, Northgate Office Building
5861 Rivers Avenue
North Charleston, South Carolina 29405

Dear Mr. Shaw:

You have requested an opinion from this Office as to whether or not a late charge of fifteen per cent (15%) of the unpaid balance may be applied to delinquent water accounts for the City of Goose Creek. In my opinion, the validity of a rule or regulation imposing such a penalty is doubtful.

There is authority for the proposition that late charges may be added to water accounts which become delinquent. In [Tacoma Hotel Co. v. Tacoma Light and Water Co., \(Wash.\) 28 P.516 \(1891\)](#), the court upheld an ordinance imposing a late charge on the theory that such requirement is reasonably calculated to insure payment. In that case, however, the charge was only five per cent (5%) of the actual unpaid water rent.

The more recent and stronger authority indicates that while late charges in the nature of penalties are not per se void, they may be (at least in the absence of statutory authorization) subject to strict requirements of fairness and reasonableness. [Jones v. Kansas Gas and Electric Co., 565 P.2d 597 \(1967\)](#); [Ford v. Waterworks Co., \(Miss.\) 59 So. 880 \(1912\)](#).

In [Jones](#), a penalty of five per cent (5%) applied to the unpaid balance ten days after the due date was held 'discriminatory and unfair' if applied to all customers alike. The court there reasoned:

There are two classes of late payers:

(1) Those who pay after a penalty is imposed but before collection efforts are initiated, and

(2) those who do not pay until the utility company is forced to make additional collection efforts. The practice of assessing the same penalty against the two classes is unreasonable . . . Our decision does not condemn the use of a late penalty. There is ample justification for imposing a late payment charge. The charge which is levied, however, must be reasonably related to the purpose to be achieved; and if the purpose is to recover collection costs the utility must collect from the class of consumers creating the costs. 565 p.2d at

Inasmuch as the cases cited above indicate that there is a split of authority on the validity of late payment penalties, I am not able to give a definitive opinion on the procedure currently employed by the City of Goose Creek. I do believe, however, that the fact that that penalty is three times greater than those mentioned in the cases, along with the fact that the penalty itself is added to the unpaid balance, militates against its reasonableness.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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