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Attorney General Says Water Fee Legal

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A development fee added to city of Booneville water bills last spring did not violate 2007 state legislation, a Dec. 11 attorney general's opinion states.

On April 23, the Booneville City Council passed a 25 cents per 1,000 gallons water development fee to help cover costs for site selection, environmental issues, design, maintenance and operations of a future new water supply, treatment facility and transmission system.

Proposed since 1999, the desired lake is a joint project with the city of Waldron in neighboring Scott County and would likely be located in the Elm Park area between the two cities.

According to fiscal year 2008 funding request information sent by the South Logan/Scott County Water Committee to U.S. Sen. Blanche Lincoln, total project costs are estimated at \$43.07 million.

In August, Booneville officials were advised by the Arkansas Municipal League that the water fee would likely violate Act 310, passed by the Legislature on March 19, 2007, to clarify exemptions to the definition of "development impact fee."

Booneville City Attorney Johnny Williams asked state Rep. John Paul Wells, D-Paris, to seek the attorney general's opinion.

The Logan County city had collected the fee for about a month and was prepared to refund it should that be required, Booneville Mayor Jerry Wilkins said then.

Wilkins did not return Times Record calls by story deadline Thursday.

According to the act, a development impact fee is one imposed by a municipality or municipal service agency on a development to generate revenue for funding or for recouping costs reasonably attributable to the use of the development.

It provided exemptions for real estate taxes, special assessments for improvement districts, plat filing fees and construction permits, hookup fees and construction costs of the line bearing the connection. The act was retroactive to July 16, 2003, and required refunds of improperly levied impact fees.

According to the opinion written by Assistant Attorney General Elisabeth A. Walker and approved by Attorney General Dustin McDaniel, the Booneville "water development fee" does not appear to fall under the law's definition of an impact fee.

"The development fee plainly applies to 'all customers,' the purpose being to help finance the development of new water facilities.

"There is no suggestion under the Booneville ordinance that this fee constitutes a 'development impact fee' as contemplated by A.C.A 14-56-103," the opinion states.

In August, Waldron Mayor Randy Butler canceled a planned public hearing regarding a proposed 50-cent fee on that city's monthly water bills to help cover site selection, design and other costs of the proposed joint water source. Because the Municipal League similarly advised Waldron officials from pursuing the fee, Butler said, the proposed ordinance never went before the City Council.

On Thursday, Butler said he'd review the attorney general's opinion and the proposed fee. However, he said, because the Waldron City Council had passed a little water rate increase in November, it may not want to revisit the proposed water source fee at this time.

"We may want to wait until we see what we get out of Washington, D.C., for the joint lake project," Butler said, regarding the South Logan/Scott County Water Committee's funding search.

On Nov. 13, the Waldron council passed a 30 cents per 1,000 gallons water usage rate increase to fund needed improvements to its aging infrastructure. The city starts collecting that increase with the January billing. It is expected to generate about \$150,000 a year toward about \$1.2 million in water- and sewer-plant repairs and other infrastructure improvements.

Butler said the lake project committee had asked to

\$1.62 million in federal funding, but was left out of two recent federal appropriations bills.

"I don't know why," Butler said.

The appropriations request to Lincoln states that Scott County has no additional water available, and many of its rural residents have no drinkable water. It says regional supplier Booneville can no longer provide additional water to its customer associations in Logan, Scott, Yell, Franklin and parts of Sebastian County. Meanwhile, the planned Interstate 49 expansion will expose the area to more growth. The proposed new lake would enable area communities to sustain growth for the next

50 years, it states.