
Coates' Canons Blog: Disconnecting Utility Services for Non-Utility Fee (and Tax) Delinquencies

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BlueSky Town resident, Dell Linquent, has fallen on tough times. She lost her job several months ago and is having trouble keeping up with all her bills. Dell owes \$44 in annual licensing fees to BlueSky for her two dogs. She owes \$130 in property taxes on her car to Carolina County and a \$5 motor vehicle license tax to the town. Until a few months ago Dell ran a small landscaping business on the side. She had to close down the business because she was not able to pay her vendors. She also failed to pay her annual privilege license tax of \$100. The town recently imposed a special assessment on Dell's residential property to finance a sidewalk installation in her neighborhood. The total amount of the assessment is \$1000, which Dell may pay over a period of five years at 8 percent interest per year. Dell has missed her first installment payment of \$216. Adding insult to injury (or injury to insult) Dell recently sustained injuries in a car accident that required her to be transported by ambulance to a local hospital. She owes \$75 in fees to the town's rescue squad to cover the emergency services. Just about the only payment Dell is current on is her water bill because she does not want to risk having the water shut off.

The skies are not all blue for the town either. It faces its own economic difficulties. Growth has been stagnant for several years, thwarting new revenue generation. Additionally collections of outstanding taxes and fees owed to the town are at a record low. At a recent board meeting, the town council directed the town manager to recover any and all revenue owed to the town by any legal means. The manager comes up with a brilliant idea to increase revenue collections. She instructs Utility Jones to disconnect water service to any of the town's water customer who currently owe any outstanding fees or taxes to the town. Utility Jones is not quite as sure about the brilliance of the manager's plan but does as instructed. Dell Linquent is among the customers whose water is disconnected. As Utility Jones might have predicted, Dell shows up the following morning and is livid. She claims that the town illegally shut off her water service because she is current on her water bill, and she threatens to sue the town and Utility Jones if the water is not reconnected immediately. What should Utility Jones do?

Utility Jones should reconnect Dell's water service (after consulting with the town's attorney and manager, of course). The town only may disconnect a customer's water services under two circumstances: (1) a water customer is at least 10 days delinquent on payment for water services; or (2) (under certain circumstances) a water customer has violated a rule or regulation related to the provision of water services. The town may not disconnect water services (or other public enterprise utility services) because a customer is delinquent on non-utility fees, charges, or taxes.

G.S. 160A-314 authorizes a municipality to collect delinquent utility accounts, including delinquent water accounts, "by any remedy provided by law for collecting and enforcing private debts . . ." It further authorizes a municipality to "specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services" and to "discontinue service to any customer whose account remains delinquent for more than 10 days." That means that a municipality that provides water service can disconnect the service if a customer does not pay its water fees or charges within 10 days after they become due. (Some local ordinances allow for a longer grace period.)

It also allows a municipality that provides multiple public enterprise utility services (including water, wastewater, solid waste, electric, natural gas, cable television, and stormwater services) to list the fees and charges for all of the services on the same bill. The municipality's governing board further may adopt an ordinance specifying how partial payments are allocated among the various fees and charges on the bill. For example, if a unit provides water, wastewater and solid waste services and bills for these services on the same bill, it may apply a partial payment to the solid waste fees and charges first, the wastewater fees and charges second, and the water fees and charges last. If a bill is not paid in full (at least) the water fees and charges remain unpaid and the municipality may disconnect the water services. (**G.S. 153A-277** provides similar authority for counties.)

A municipality's (or county's) governing board also has broad authority "to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance . . . and may be enforced with the remedies available under any provision of law." **G.S. 160A-312** (municipalities); **G.S. 153A-275** (counties). A local governing board may condition the receipt of its utility services on compliance with its reasonable rules and regulations and may disconnect services to any customer who fails to comply.

A local government, however, may not disconnect its public enterprise utility services for non-payment of non-public enterprise utility fees, charges or taxes or for non-compliance with non-public enterprise utility rules and regulations.

Generally, a local government is free to list other fees, charges, and taxes on its utility bill, such as licensing taxes, ambulance fees, or nuisance abatement charges. Units may choose to do this to save the administrative costs associated with generating additional bills. (There are a few exceptions where state statutes specify certain billing practices. See, e.g. **G.S. 160A-232 & G.S. 160A-239.5** (special assessments)).

Whether or not a local government lists the non-public enterprise utility fees, charges, or taxes on the utility bill, it may not employ the collection remedies authorized for the public enterprise utility services to prompt payment for the non-public enterprise utility fees, charges, or taxes. A local government must use the collection remedies that are specifically authorized for the underlying fee, charge or tax. In **Beyond the Property Tax: Collecting Other Taxes and Fees**, my colleague, Chris McLaughlin, details the available collection remedies for the most common fees, charges and taxes imposed by local governments.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-277.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-312.html
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