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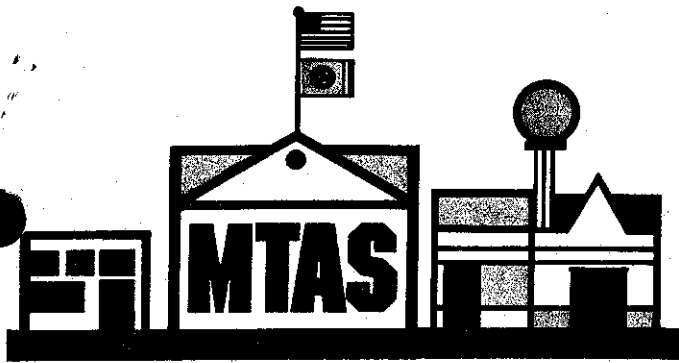
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TECHNICAL BULLETIN



MUNICIPAL TECHNICAL ADVISORY SERVICE
THE UNIVERSITY OF TENNESSEE
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

Bulletin No. 17

May 7, 1990

CIVIL PENALTIES FOR WASTEWATER PRETREATMENT VIOLATIONS

by Ed Archer

On September 5, 1989 the Attorney General's office issued Opinion Number 89-109 concerning the amount of the penalty that a municipality can charge for wastewater pretreatment violations. The specific questions answered were:

1. Are there any constitutional prohibitions to the imposition by municipalities, pursuant to *Tennessee Code Annotated (TCA)* 69-3-125, of civil penalties of up to \$10,000 per day against persons in violations of pretreatment requirements?
2. Assuming there to be no constitutional impediments to such civil penalty assessments, would a charter provision prohibiting the imposition of a fine in excess of \$50 bar the imposition of such civil penalties?

These questions arose because the Tennessee Constitution provides that one is entitled to a jury trial in cases involving fines exceeding \$50. It is generally believed that municipal courts in Tennessee cannot levy fines exceeding \$50. That belief is reflected in many municipal charters.

The opinion replied no to both questions. **Municipalities have the legal right to charge up to \$10,000 per day in civil penalties for a violation of their pretreatment ordinance.** Many reasons were given for the opinion but major issues settled include:

1. The State of Tennessee assumed responsibility from the federal government (EPA) for establishing a permit system (NPDES) to control the discharge of pollutants to waterways within the state. The state placed requirements on cities based on the limits of the receiving stream used for discharge. Since many cities take industrial waste into their systems, they (cities) must have the legal authority to control these discharges. Therefore, cities must develop pretreatment ordinances and programs for enforcement. The state transferred this authority to municipalities with TCA 69-3-101 ("The Water Quality Control Act of 1977") and gave them the authority to assess civil penalties of up to \$10,000.

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2. The State constitution provision limiting fines, as well as other state laws and city charters, were either superseded or do not apply because they applied to criminal penalties. The Attorney General's office sees a distinct difference between a civil penalty and a criminal penalty (fine). The opinion cites several cases supporting that distinction, including some that make these points:
- o Although a fine is always a penalty, a penalty is not always a fine.
 - o As a broad category, "a penalty is a sum of money exacted by way of punishment for doing some act which is prohibited or omitting to do something which is required to be done."
 - o A fine "is imposed as a punishment for the commission of a criminal offense."
 - o "...the term 'fine' is a term of art limited to punishment for a criminal offense as opposed to a civil sanction for acts or omissions prohibited by statute."

Therefore, wastewater pretreatment violations have been properly termed civil penalties and are legally enforceable by the municipality in amounts up to \$10,000 per day.

For More Information

This bulletin is by no means a complete analysis of the Attorney General's opinion. For additional information or a copy of the opinion, contact Ed Archer, Utility Management Consultant in Jackson at 901/423-3710 or your MTAS Municipal Consultant.

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