

# The Senate of The State of Texas

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TODD STAPLES

November 3, 2005

The Honorable Greg Abbott  
Attorney General of Texas  
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**RQ-0411-GA**

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OPINION COMMITTEE

FILE # ML-44493-05

I.D. # 44493

Dear General Abbott:

I respectfully request your opinion concerning the application of Texas Government Code (TGC) 2251.021 relating to the time for payment by governmental entities and how it applies to payment deadlines and late charges required by a city owned utility.

## Background

The City of Alto (city) operates the Alto Natural Gas Company (ANGC) and contends that city utility companies are required to treat all customers the same. The city explains if you set a payment due date, and assess a late charge after that date, that all are subject to it, or else you can make no one subject to it. The same being true for the disconnect date. It is also the assertion of the city that if a city did not assess a charge for a customer which would be due of any other customer then that would be considered giving away taxpayer money. And, ultimately, the person who did not access the fee could face a criminal offense for having given away taxpayer dollars. Currently, ANGC assesses a 10% late fee beginning the 16th of the month with intent to terminate if payment and penalty are not received by the 26th of the month.

The city also cited similar requirements for other utilities under TCEQ 291 Rules and while the rules do not apply to natural gas the requirement to treat all customers the same does apply.

In June 2005, the Wells Independent School District received notice of late penalties and intent to terminate because payment had not been received by the 16th of the month. Long established Wells I.S.D. Board of Trustees' policies prescribe the regular meeting date and the procedures for approval and payment of bills. The superintendent nor administrative staff of the school district may directly pay the utility bill. Typically, once approved by the board the payment is mailed between



the 11th and 17th of the month and allowing for mail delivery, payment should always be received by the 22nd of the month.

Wells I.S.D. submits that payment received by the 22nd of the month should not be considered late because of specific requirements cited by TGC 2251.021 (a) (3).

### ***Texas Government Code***

#### ***SUBCHAPTER B. PAYMENTS AND INTEREST***

***2251.021. TIME FOR PAYMENT BY GOVERNMENTAL ENTITY. (a)***  
*Except as provided by Subsection (b), a payment by a governmental entity who is under contract executed on or after September 1, 1987, is overdue if the payment is received on the 31st day after the later of :*

- (1) the date the governmental entity receives the goods under the contract;*
- (2) the date the performance of the service under the contract is completed; or*
- (3) the date the governmental entity receives an invoice for the goods or service.*

Wells I.S.D. believes they should not be considered late on their payment until the 31st day after the date they received the invoice/bill based on this statute. However, the city contends there is no contract so therefore not applicable.

#### **Other potentially relevant information**

While no contract for service is on file, the city believes they can terminate services at any time. Wells I.S.D. expresses that they have been unsuccessful in their requests for a contract and believe such action such as termination cannot be taken and that no penalty can be imposed in the absence of a contract.

Wells I.S.D. also believes that the purpose of a penalty is to secure payment and because the State of Texas insures they cannot default on payments there is no need for penalties.

#### **Conclusion**

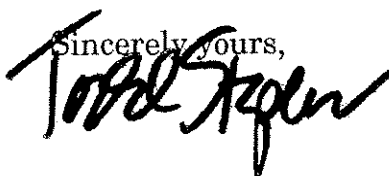
In researching this issue and working with your office and other organizations, we found no case law or precedent to address this issue. And, it appears both sides have valid arguments for their position. In order to prevent litigation or legal action, an Attorney General Opinion would be the appropriate manner to address this issue.

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I request your opinion on the following questions: Is Wells I.S.D. subject to Alto Natural Gas Company policy for payment deadlines and penalty assessments or can the school district pay according to the deadlines set forth in Texas Government Code Sec. 2251.021?

Does a city owned utility like Alto Natural Gas Co. have the ability to allow for different penalty/assessment criteria for a governmental entity that would not be available to all other customers?

Thank you for your attention to this matter. I have enclosed background information for convenience. Please do not hesitate to contact me with any questions.

Sincerely yours,  


Todd Staples

TS/SW/sw

Enclosures