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JUSTICE BUILDING, LITTLE ROCK 72201

April 8, 1985

(501) 371-2007

OPINION NO. 85-96

The Honorable Doug Wood
State Representative
215 North Claremont
Sherwood, AR 72116

Dear Representative Wood:

I received your request for an opinion regarding Act 357 of 1985 dated April 2, 1985. In your letter, you asked, ". . . does the wording in Act 357 require 'equal' treatment between inside city customers and outside city customers, and if so, does this preclude the use of discounts, rebates, franchise taxes, or other pricing schemes which result in 'unequal' rates being charged outside city customers?"

Based on my research and my analysis of the wording of the Act, I believe Act 357 requires that equal, identical rates be charged to all customers when a municipality serves more than 3,000 electric customers in a contiguous rural area. Obviously, this does not mean that all customers will pay the same total dollar amount, but does mean that customers in the same rate class i.e., residential, commercial, etc. inside and outside the city limits would be charged the same rate for the same type of service. This would preclude the various "adjustments" to which you refer from being made.

Since it is a new Act, no case law exists that interprets the law. I was unable to find an Arkansas Supreme Court decision in which the word "equal" was defined as it is used in Act 357. The word has been defined as "substantially equal" and not "identical" in federal decisions interpreting the Fair Labor Standards Act's equal pay provisions. See, Hodgson v. Daisy Mfg. Co., 317 F.Supp. 538, 541 (D.C. Ark. 1970).

The language of the Act indicates fairly clearly that "equal" was intended to mean "identical". The Act discusses situations in which variations in charges by as much as 10% would be tolerated. This was deemed reasonable because the legislature ". . . realizes it is more expensive to serve customers outside the city limits of a municipality" However, the Legislature went on to say that ". . . such cost differential should not exceed ten percent (10%) as a method of protecting those customers served outside the corporate limits." (emphasis added) Act 357 of 1985, Section 1.

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Section 1 of the Act, therefore, identified situations in which different rates could be charged city and rural customers. Section 2, however, qualifies this provision by adding the language regarding service to more than 3,000 customers. When the municipality serves more than 3,000 electric customers outside its corporate limits, no difference or variation in rates is permitted and the "... rates shall be equal between customers inside and outside the corporate limits of the municipality." (emphasis added) Act 357 of 1985, Section 2.

If rates are to be "equal" when more than 3,000 rural customers are being served, then various "adjustments" to the rates that have the effect of making them "unequal" conflict with the express language of the law.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Robert H. Wood.

Sincerely,


STEVE CLARK
Attorney General

SC/RW/pw