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federal jurisdiction over the subject matter, if the courts fail to have the necessary independent jurisdiction over the affirmative claim, a counter-claim will be limited to “a claim arising out of the same transaction as that upon which suit was brought.”

MUNICIPAL CORPORATIONS—DISCRIMINATION BETWEEN RESIDENT AND NON-RESIDENT USERS OF PUBLIC UTILITIES

A non-resident user of the water and sewage system sought to enjoin the municipality from raising the water rate one and a half times the rate charged residents and raising the sewage rate to double that charged residents. Held, the municipality could not charge non-residents higher taxes solely because they were residing outside of the corporate limits. City of Texarkana v. Wiggins, 246 S.W.2d 622 (Texas 1952).

The earliest cases on the reasonableness of rates dealt chiefly, if not exclusively, with private corporations. As a result, it is well settled that a private corporation doing a public service cannot charge discriminatory or unreasonable rates to customers in the same class. With the development of municipal ownership of formerly private utility companies, the question arose as to the rights and duties of a city in regard to the rates charged. These rights and duties, in general, have been decided to be neither more nor less than those held by a private corporation. However, when faced with the instant problem, discrimination against non-residents, courts have


1. San Diego Land & Town Co. v. City of National City, 74 Fed 79 (C.C.S.D. Cal. 1896); City of Council of Montgomery v. Capital City Water Co., 92 Ala. 376, 9 So. 337 (1899); City Council of Montgomery v. Montgomery Waterworks Co., 77 Ala. 248 (1884); Spring Valley Waterworks v. City and County of San Francisco, 52 Cal. 111 (1877); Burlington Waterworks Co. v. City of Burlington, 43 Kan. 725, 23 Pac. 1068 (1899); Nicholasville Water Co. v. Board of Councilmen of Town of Nicholasville, 36 S.W. 549 (Ky. 1896); Borough of Carlisle v. Carlisle Gas & Water Co., 4 Atl. 179 (Pa. 1886).


almost unanimously said that "the same yardstick as to what is reasonable is not ... applied ...." It has been decided that a city ordinance requiring non-resident users of water to pay double the rate charged to residents was not unreasonable or discriminatory.\(^6\) A more recent case held that a municipality did not have a duty to furnish water to non-residents at any particular rate or to furnish them water at all, despite the existence of an agreement with the previous private owner of the utility.\(^7\)

The majority in the instant case, cited a number of cases\(^8\) which admittedly were not on point. With these authorities the court announced the broad general rule that a municipal corporation, just like a private corporation doing a public service, cannot charge discriminatory or unreasonable rates to customers in the same class. Avoiding the question of whether or not the municipality has a duty to furnish non-residents with water, but assuming that it has no such duty, the court resorted to two cases\(^9\) to establish that the greater power of being able to refuse water does not carry with it the lesser power to set any kind of rate when it does decide to supply the water.\(^10\) The court argued that discrimination cannot be justified on the basis that the residents pay taxes which are being used to pay for the acquisition of the water system. It asserted the principle that corporate limits of a municipality, of themselves, do not furnish a reasonable basis for rate differentiation.

The opinion puts a further burden on the municipality by requiring it to justify the difference in the rates. The court refuted the contention that the statute\(^11\) authorized municipalities to furnish non-residents with utilities "... under such terms and conditions as may appear to be for the best interest of such town or city," permits such discrimination. It ruled that even if the statute does give a municipality the right to discriminate when it first offers service to non-residents, it is not permitted any further rate discrimination.

Granted, that the intention of the majority, in its desire to prevent a return "... to the primitive state of development in utility control when rates were determined by friendship and political power or pressure,"\(^12\) is a desirable one, it is submitted that the well reasoned dissent, supported by

10. Since both of these cases involve the question of whether or not the sovereign power of a state to regulate corporations includes the power to contravene powers belonging to the federal government, it seems that they are not authorities for the proposition stated in the main case.
12. 246 S.W.2d 622, 627 (1952).
the weight of authority, is the better view. Conceding that this permits discrimination, it seems that the opposite rule would be even more unjust, in that it would discriminate against residents of a municipality who are, in reality, bearing the greater burden of paying for the service. Since a municipality cannot tax non-residents, it should at least be able to demand higher utility rates, and it certainly should not be saddled with the burden of showing that the rates established are not unreasonable. That burden should be left with the party alleging it.

NEGOTIABLE INSTRUMENTS — EFFECT OF COUNTER SIGNATURE ON FORGED ENDORSEMENT — IMPLIED VALIDATION

Appellant, check-cashing service, sent appellee’s check, drawn by its president, but not counter-signed, through for collection. Drawee bank secured the signature of appellee’s comptroller, and paid appellant’s bank. Appellant, upon notice of the deposit, paid value for the check. Upon discovery that check bore a forged indorsement, appellee instituted action to determine the respective rights to the fund. Held, for appellant. Where a co-signer signs a check bearing a forged indorsement, the co-signer impliedly guarantees the validity of the endorsement, and “engages that on due presentment the instrument will be accepted or paid, or both. . . .” Block v. Howard Sober Inc., 60 So.2d 538 (Fla. 1952).

Generally, a forged indorsement passes no title, even if the subsequent transferee is a bona fide holder without notice. The drawer of a check can recover monies paid on a forged indorsement from the drawee or any subsequent holder of the check. The drawee bank, unable to charge the

13. Supra note 4.

1. 5A Michie, Banks and Banking § 171 (1950) (bank cannot pay a check requiring a counter-signature if one is lacking. The check is invalid).
3. Ocala Nat. Farm Loan Ass'n v. Munro & Chambliss Nat. Bank, 89 Fla. 242, 103 So. 609 (1925); Hayes v. Midland Credit Co., 173 Minn. 554, 218 N.W. 106 (1928).