

May 31, 2013

Mr. Patrick G. Begley  
Forsyth City Attorney  
247 North Ninth Avenue  
P.O. Box 226  
Forsyth, MT 59327-0226

Re: Time Bar as to Claim Against Municipality

Dear Mr. Begley:

I have reviewed your letter of March 13, 2013, raising the question whether a claim to the City of Forsyth for a refund due to overpayment for water and sewer services is subject to the one-year statute of limitations set out in § 7-6-4301, MCA. Since the answer to your question is clear based on the application of statute, I have determined that a letter of advice rather than a formal opinion is the appropriate response.

According to your letter, Mr. Fitzgerald has asked for a refund of a portion of the water and sewer charges for his restaurant for the period of June 2004 to December 2012. Apparently during that time the city charged him the rate for a 2 inch meter when in fact the restaurant only has a 1.5 inch meter "with a 1 inch meter going out."

Section 7-6-4301, MCA, states that all claims against a city "must be presented with all necessary and proper vouchers within 1 year from the date the claims accrued." Section 27-2-102(a) explains that "a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action." Under these circumstances, Mr. Fitzgerald's claim accrued each time he received a bill based on the incorrect meter size, because at that time all elements of the claim existed.

The question then becomes whether Mr. Fitzgerald's lack of knowledge of the error in assessed meter size tolled the one-year limitation period. In considering a similar taxpayer claim for a refund based on an unconstitutional tax-appraisal system, the

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Montana Supreme Court determined that lack of actual knowledge did not toll the applicable statute of limitations because:

Section 27-2-102(2), MCA, expressly provides that “lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.”

*Sampson v. Montana*, 285 Mont. 310, 319, 948 P.2d 232, 237-38 (1997).

Consequently, Mr. Fitzgerald’s repayment claim to the city based on the inaccurate water and sewer rate is subject to the one-year limitation period prescribed by Mont. Code Ann. § 7-6-4301, which is not tolled by Mr. Fitzgerald’s lack of knowledge of the error.

I hope you find this helpful. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

J. STUART SEGREST  
Assistant Attorney General

jss/jym