

Opinion No. 39-3370

December 29, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{*130} I have your inquiry of December 21 with respect to the newly acquired electric light plant by the Town of Gallup.

We have no statutes requiring deposits by consumers of electric lights, or authorizing or requiring the payment of interest thereon by public utilities.

However, "the general rule is that a public service company furnishing gas, electricity, water or telephone service may require that charges shall * * * * be secured by a reasonable deposit by the consumer," and that "the rule permitting the company to require the deposit does not permit the company to hold the consumer's money without paying interest thereon. The requirement that the company should pay interest upon the deposits is but the complement of the rule that it may require a deposit. One part of the rule is for the protection of the company, the other for the protection of the consumer. Manifestly, it would not be right to permit the company to hold and use the consumer's money or property gratis; otherwise the company's interest would be to require a greater deposit than was really necessary to give it protection." -- Union Light, Heat & Power Co. v. Mulligan, 197 S. W. 1081, 177 Ky. 662.

In view of the general rule, it would seem to be entirely proper for the municipal public utility company to require a deposit or to pay interest thereon.

It is likely that the city may have required such payment of interest on deposits in the granting of its original franchise.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.