



STATE OF KANSAS

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February 7, 1975

Opinion No. 75- 46

The Honorable Fred W. Rosenau  
State Representative  
House of Representatives  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Dear Representative Rosenau:

You inquire concerning 1975 House Bill 2047. You suggest that the bill seems to contemplate the cancellation of certificates of convenience and necessity previously issued, at least to the extent of dual or overlapping certificates. You question whether a property interest exists in such certificates so as to require some procedural due process to determine whether a certificate should be cancelled. You also suggest that bondholders and others have extended credit based upon these certificates, and that such groups should also be entitled to due process and possibly compensation. You suggest that in the absence of a grandfather clause, or provision for procedural due process, that the bill is unconstitutional.

Section 3(b) provides for procedural safeguards:

"Such power shall include the right to hold public hearings and in any such hearing, the commission shall be guided by the following conditions, as they existed on the effective date of this act:

(1) The proximity of existing distribution lines of the retail electric suppliers involved;

(2) which supplier was first furnishing retail electric service, and the age of existing facilities in the area; and

(3) the elimination and prevention of duplicate electric lines and facilities furnishing retail electric service within such territory."

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Secondly, you express concern regarding the adequacy of certain definitions in the act. For example, you point out that the phrase "distribution line" is not more elaborately defined. This term is not itself so ambiguous or lacking in specificity as to be objectionable. Similarly, the words "entity," "encumbrance of the landscape," and "retail electric service" are words with commonly accepted and determinable meanings sufficiently specific to guide the Kansas Corporation Commission in the administration of the act. Certainly, any ambiguity which you believe to be excessive may be corrected by timely amendment of the bill.

Lastly, you point out that the act grants "grandfather" protection to certain municipal utility, and question whether this is not discriminatory. It is all too often overlooked or forgotten that the United States Constitution does not forbid discrimination. It forbids invidious, unreasonable, and arbitrary discrimination. The reasonableness of any particular classification depends upon the public and legislative policies and factual information which may be assembled justify a particular classification. We have no information whatever upon which to base a judgment concerning the reasonableness of the particular classification in question here.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

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