



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

November 14, 1975

ATTORNEY GENERAL OPINION NO. 75-432

James T. Wiglesworth
Rainey, Wiglesworth & Duwe
Suite 400, General Square Center
9800 Metcalf
Overland Park, Kansas 66212

Re: Cities--Municipalities--Public Utilities--Franchises

Synopsis: K.S.A. 12-824 and K.S.A. 12-2001 *et seq.* provide separate and distinct alternative procedures which the city may utilize in granting a franchise to a public utility.

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Dear Mr. Wiglesworth:

As representative of the City of Shawnee, you have requested an opinion from this office concerning the applicability of K.S.A. 12-824 and K.S.A. 12-2001 *et seq.* to the City of Shawnee in granting by ordinance a franchise right to the Gas Service Company. Specifically, you inquire whether the procedure for granting such franchise contained in K.S.A. 12-2001 *et seq.* is applicable when a city undertakes to grant a utility franchise pursuant to K.S.A. 12-824. In other words, you ask whether the city may award a franchise pursuant to K.S.A. 12-824, upon such terms and conditions as the city may by ordinance prescribe, independently of the requirements and restrictions of K.S.A. 12-2001 *et seq.*

In this regard, K.S.A. 12-824 provides:

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"All incorporated cities in the state of Kansas into or through which any interurban railroad may have heretofore been built, or into or through which any interurban railroad may propose to build a line of interurban railroad, or into or through which any corporation operating a system for the transmission of electric current between two or more incorporated cities in the state shall have heretofore built, or into or through which any such corporation may propose to build its transmission lines, are hereby authorized and empowered upon such terms and conditions, as any such city may by ordinance prescribe, to grant franchises to such interurban railroad companies and transmission corporations for any public utility purposes for which they are or hereafter may be incorporated, for a period not greater than the time for which the charter under which said company or corporation is then operating shall continue to run but in no case to exceed 35 years:"

The other pertinent franchise statute, K.S.A. 12-2001, states:

"The governing body of any city may permit any person, firm or corporation to manufacture, sell and furnish artificial or natural gas light, and heat, electric light, water, power or heat, or steam heat to the inhabitants, and to build street railways, to be operated over and along or under the streets and public grounds of such city, and may permit the construction and operation of telegraph and telephone lines, and the laying of pipes, conduits, cables, and all appliances necessary for the construction and operation of gas and electric-light and steam-heat plants and electric railways, or bus companies, and the laying of pipes for the operation of a water plant for the distribution or furnishing of water, over, under and along the streets and alleys of such city, and may grant to any person, firm, corporation or partnership the right to use the streets in the

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carrying on of any business which is not prohibited by law wherein said business is primarily conducted on the streets of any city of the state of Kansas, upon the express conditions hereinafter imposed,"

The remainder of the latter statutes are devoted to setting out with some degree of clarity the various rights, liabilities, and contract conditions to the franchise which are applicable to both the city and franchise grantee.

In our view, K.S.A. 12-824 and K.S.A. 12-2001 provide complete and separate alternative procedures that the city may employ in granting franchise rights to public utility companies. Although in dicta the Court in *Kansas Power & Light Co. v. City of Great Bend*, 172 Kan. 126, 129 (1951) stated that "The Kansas Franchise Act (G.S. 1949, 12-2001) provides the only method by which a city may grant to a public utility such as appellant herein the right to use the public streets in carrying on its private business," it is clear from reading these two statutes that K.S.A. 12-2001 *et seq.* (formerly G. S. 12-2001 *et seq.*) is not the only enabling authority for cities to utilize in granting franchise rights to public utility companies. Although the grant of authority to the city under K.S.A. 12-2001 *et seq.* is broader than that contained in K.S.A. 12-824, this fact does not in any material manner affect the proper grant of a franchise to a utility pursuant to K.S.A. 12-824. In fact, this very conclusion has been codified by enactment of K.S.A. 12-2002 which provides:

"This act shall not be construed either to affect the jurisdiction of the corporation commission or to prevent any electric or gas utility from obtaining a franchise under the terms of section 12-824 of the General Statutes of 1935 or any amendments thereto."

Presumptively, this indicates that the legislature intended that the two acts be held to be separate and independent. The fact that the procedures outlined in both statutes are at substantial variance further supports the conclusion that the two statutes afforded alternative routes for public utilities to pursue in order to secure franchise rights from the city.