



STATE OF KANSAS

Office of the Attorney General

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

CURT T. SCHNEIDER

Attorney General

December 29, 1975

ATTORNEY GENERAL OPINION NO. 75- 473

Charles E. Wetzler
City Attorney
7700 Mission Road
Prairie Village, Kansas 66208

Re: Cities and Municipalities--Franchises

Synopsis: The governing body of any city may not require the franchisee utility under K.S.A. 12-2001 to report gross receipts and pay to the city the amount due more frequently than once every six months.

* * *

Dear Mr. Wetzler:

You have requested an opinion from this office concerning an interpretation of K.S.A. 12-2001 in light of the use of the word "shall" in the following paragraph therein contained:

"Fifth. No such grant, right, privilege or franchise shall ever be made to any person, firm, corporation or association unless it provides for adequate compensation or consideration therefore to be paid to such city, and regardless of whether or not other or additional compensation is provided for such grantee shall pay annually such fixed charge as may be prescribed in the franchise ordinance. Such fixed charge may consist of a percentage of the gross receipts derived from the service permitted by the grant, right, privilege or franchise from consumers of recipients of such

Charles E. Wetzler
Page Two
December 29, 1975

service located within the corporate boundaries of such city, and, in case of public utilities or common carriers situated and operated wholly or principally within such city, or principally operated for the benefit of such city or its people, from consumers or recipients located in territory immediately adjoining such city and not within the boundaries of any other incorporated city; and in such case such grantee shall make and report to the governing body all such gross receipts once in each six (6) months period, and pay into the treasury the amount due such city at the time said report is made."
[Emphasis supplied].

Specifically, you wish to know whether the city may, by ordinance, require the franchisee utility to report gross receipts and pay into the treasury the amount due more frequently than semi-annually.

In resolving the question, thus posed, recourse to the statute and the rules of statutory construction leads me to the opinion that any ordinance enacted by the city requiring the franchisee utility to report more frequently than once every six months would be invalid as contradictory to K.S.A. 12-2001 et seq.

First, the statute itself provides in the subsection prior to the above-quoted paragraph that:

" ... the governing body of any city may grant to any person, firm corporation or partnership the right to use the streets in the 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, and not otherwise, in this act to wit."
[Emphasis supplied].

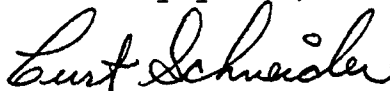
Charles E. Wetzler
Page Three
December 29, 1975

Interpreted in conjunction with the reporting requirement contained in the fifth paragraph of K.S.A. 12-2001, any ordinance enacted by the city which attempted to alter the express conditions listed in the statutory authority which the city may grant a franchise right to a public utility would conflict with the express command of the statute itself.

Secondly, the general presumption attached to the word "shall" is that it is construed in an imperative sense rather than directly and [that] presumption will control unless it appears clearly from context or manifest purpose of the act as a whole that the legislature intended that a different construction should be given to the word. City of Gary v. Yaksich, 90 N.E. 2d 509, 511, 120 Ind.App. 121. (1950). People v. Adams, 99 Cal. Rptr. 122, 124, 21 C.A. 3d, 972 (1972). Morgan v. State, 194 So. 2d, 820, 280 Ala. 414 (1967). Since there appears nothing which indicates a contrary legislative intent, our presumption must accord with that generally applied to the word.

Accordingly, it is my opinion that the governing body of each city may not require the franchise utility under K.S.A. 12-2001 to report gross receipts and pay to the city the amount due more frequently than once every six months.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv