

FILE

Subject

*Cities Public Sup.
Water Extension*

Copy to _____

December 28, 1976

ATTORNEY GENERAL OPINION NO. 76-376

Mr. Robert L. Farmer
City Attorney
One East Third Street
Fort Scott, Kansas 66701

Re: Cities--Waterworks--Jurisdiction

Synopsis: The City of Fort Scott, Kansas, has general municipal jurisdiction over the property on which has been constructed a water storage reservoir and dam, and may exercise its police jurisdiction there so as to preserve the public peace and order.

* * *

Dear Mr. Farmer:

You enclose copies of ordinance no. 2265, adopted by the City of Fort Scott in 1960, and ordinance no. 2528, adopted in 1957, which repealed the earlier ordinance.

Under the first ordinance, the city undertook to extend its police jurisdiction to a tract of land used by the city as a water supply system. Section 2 of both ordinances provides thus in identical language thus:

"That all of the land heretofore acquired by and belonging to the City of Fort Scott, Kansas and located on portions of Sections fourteen (14), fifteen (15), twenty-two (22), twenty-three (23), and twenty-six (26) Township twenty-six (26), Range twenty-four (24), Bourbon County, Kansas,

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on which a dam has been erected and a water storage reservoir has been created, be, and the same is hereby named 'Lake Fort Scott,' and is hereinafter referred to as the 'lake.'" [Emphasis supplied.]

Section 3 of the later ordinance extends the police jurisdiction to this area in the following terms:

"The police jurisdiction and the authority of the City of Fort Scott, Kansas, is hereby extended to include said lake and all ordinances of the City of Fort Scott, Kansas shall hereafter apply to acts and conduct of any person thereon to the same extent as though said lake were located within the corporate limits of said city." [Emphasis supplied.]

As defined in section 2, the term "lake" includes not only the water storage reservoir, but all of the land acquired by the City of Fort Scott, the legal description of which appears in that section, on which the reservoir and dam have been constructed. Thus, section 3, which extends the police jurisdiction of the city to the "lake," in fact extends that police jurisdiction to the entire tract or tracts on which the reservoir and dam are located. This property, you advise, has not been annexed by the city, and is thus not within its corporate boundaries, but the city has acquired ownership of the property.

At 6 McQuillen, *Municipal Corporations*, § 24.57, the writer states thus:

"As a general rule municipal police power and ordinances operate only within the municipal area, and the police power of a municipal corporation cannot be exercised outside its boundaries without special authorization. But in the interests of police and fire protection and the preservation of the public health, laws may and sometimes do provide that all ordinances of specified cities enacted for these purposes shall apply to the territory outside of the city limits within a specified distance. . . .

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A charter or statute may authorize extraterritorial municipal police regulation of the public water supply, or public grounds in or out of municipal boundaries."

The general rule regarding territorial limitations upon the exercise of municipal police powers has been recognized in Kansas. See *State ex rel. Humphrey v. Franklin*, 40 Kan. 410, 19 P. 801 (1888). Specific statutory authorization has been provided in certain instances for the extraterritorial exercise of police jurisdiction. See, e.g., K.S.A. 12-851.

K.S.A. 13-1209 provides authority for cities of the first class, such as Fort Scott, to acquire property outside of the city for the erection of waterworks and appurtenances thereto. It concludes thus:

". . . and for the purpose of protecting, maintaining and operating such works, any such city shall have the same jurisdiction over any grounds acquired outside of the city for such purposes, as if such grounds were within the city."

Thus, there exists a statutory basis for exercise of the police jurisdiction of the city over the property in question. Section 2 defines the "lake" as not only the reservoir property, but the surrounding tracts on which it is located, and extends the police jurisdiction and authority of the city to the entire property so defined.

Thus, in my judgment, the city has assumed general municipal jurisdiction over the entire lake property as described in the ordinance quoted above, and has the correlative responsibility to exercise its jurisdiction so as to preserve the public peace and safety there. Having assumed such jurisdiction, certainly, it is within the authority of the city to provide road maintenance there to the extent that the city deems it necessary and appropriate.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj