



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 29, 1977

ATTORNEY GENERAL OPINION NO. 77-367

Mr. W. Keith Weltmer
Secretary of Administration
Department of Administration
2nd Floor - State Capitol
Topeka, Kansas 66612

Re: Budget Law--Board of Public Utilities--Applicability

Synopsis: A board of public utilities organized and existing pursuant to K.S.A. 13-1220 et seq. is neither a "taxing subdivision" nor a "municipality" as those terms appear in K.S.A. 1976 Supp. 79-2925, and hence is not subject to the budget law.

* * *

Dear Secretary Weltmer:

You inquire whether a board of public utilities which is created by K.S.A. 13-1220 et seq. is governed by the Kansas budget law, the application of which is prescribed by K.S.A. 1976 Supp. 79-2925, which provides, with exceptions not pertinent here, that the act shall apply "to all taxing subdivisions or municipalities of the state"

The board of public utilities was created by 1929 legislation which was described thus in *Puhr v. Kansas City*, 142 Kan. 704, 51 P.2d 911 (1935):

"In 1929 the legislature passed an act abolishing the office of water and light commissioner in the city of Kansas City. Management and control of its water and light plants

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were committed to a board of public utilities, charged with duty to supply water and electric energy for domestic and industrial purposes and for public use in the city. The board was given plenary authority to manage, operate, maintain and control such plants, including authority to improve, extend and enlarge" 142 Kan. at 705.

Members of the board are elected, and the board operates in effect as an independent administrative body exercising exclusive control and direction of the municipal utilities. It has no authority to levy taxes, and does not exercise the police power of the city in any other fashion. The legal status of the board has been a subject of some troublesome litigation in personal injury litigation. E.g., in *Hubert v. Board of Public Utilities of Kansas City, Kansas*, 162 Kan. 205, 174 P.2d 1017 (1946), the court held that the city itself was a necessary and indispensable party defendant in a personal injury action against the board. And in *Seely v. Board of Public Utilities*, 143 Kan. 965, 57 P.2d 471 (1936), the court held that the board was a quasi-legal entity properlyimpleaded in the action as a defendant which, upon a finding of liability, could properly be ordered to satisfy the judgment out of its surplus funds, failing which the city itself must provide for satisfaction of the judgment as in any other case where liability was judicially imposed upon a municipality. It is unnecessary to lengthen further this review of litigation involving the precise legal status of the board. It is sufficient to observe that the board is a quasi-legal entity which exercises exclusive administrative and managerial control over the municipal electrical and water utilities placed under its jurisdiction.

Clearly, it is not a "taxing subdivision," and just as clearly, in my judgment, it is not a "municipality." The board is not, in my judgment, either a municipal corporation or a quasi-municipal corporation. Rather, it is entirely an administrative and managerial entity, legally independent from the governing body of the city, but in and of itself neither a municipal corporation nor quasi-municipal corporation.

I note that the matter of the proviso appended to K.S.A. 79-2940 has been raised as pertinent to the question. That proviso, which states that "the provisions of this act shall not apply to utilities managed, operated and controlled by a board of public utilities as provided for by chapter 126 of the Laws of 1929" was added in 1947. That act, ch. 456, L. 1947, includes but two sections,

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amendments to Gen. Stat. Supp. 1945 79-2939 and -2940. The precise reach of the proviso need not be explored here, for even if it were deemed to apply to the whole budget law, commencing at then Gen. Stat. Supp. 1945 79-2925, the exemption was then and is now superfluous, for the board does not fall within the reach of that law in the first instance, being neither a taxing subdivision nor a municipality.

Thus, in my judgment, a board of public utilities organized and existing pursuant to K.S.A. 13-1220 et seq. is neither a "taxing subdivision" nor a "municipality" as those terms appear in K.S.A. 1976 Supp. 79-2925.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Dan Denk
Attorney
Board of Public Utilities
454 New Brotherhood Building
Kansas City, Kansas 66101