



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

February 24, 1978

ATTORNEY GENERAL OPINION NO. 78-93

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

Re: Cities--Fire Protection--State of Kansas

Synopsis: Payment of a charge assessed by the City of Topeka Water Department, for fire lines, standpipes and fire hydrants deemed necessary to provide adequate water connections and fire protection to structures requiring such equipment in excess of the size provided domestic users, as authorized by city ordinance, is within the authority of the State of Kansas for such connections installed and maintained at the State Office Building and at the state building at 503 Kansas Avenue, Topeka, Kansas.

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Dear Secretary Weltmer:

You request my opinion concerning the payment of a bill which has been received by your Department from the City of Topeka Water Department, for what is termed "private fire protection service."

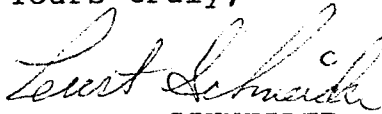
I understand that the City of Topeka has established two classes of service, one denominated domestic service, or meter service, and a second class, denominated private class. Information from the Water Department indicates that there are over 250 such private lines in the city, serving buildings which, because of size, require larger fire connections and lines than would be otherwise available. These lines run into the buildings themselves. Although the bill

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is assessed for what is called "private fire protection service," in fact it appears that the charge is assessed for fire lines, standpipes and fire hydrants which are provided larger structures to assure adequate fire protection. These charges are newly authorized, and were first billed in November, 1977, to all water users, on an annual basis.

Under Article 12, § 5(b) of the Kansas Constitution, cities are authorized to determine "their local affairs and government, including the levying of taxes, excises, fees, charges and other exactions . . . ." The question is raised whether this charge constitutes a special assessment tax sought to be levied against the State of Kansas, the procedure for the imposition of which is prescribed by K.S.A. 12-3501 *et seq.* That act applies to special assessment taxes sought to be levied against real property of the State of Kansas. The assessment in question here is not, so far as appears, levied against any property, but is rather a billing for services rendered. It is not assessed against the property to which the services have been rendered, *i.e.*, the State Office Building and the State of Kansas building at 503 Kansas Avenue, Topeka. As you point out, there is no contract between the state and the city upon which to authorize payment. So far as appears from your letter and that from the city water superintendent, dated November 30, 1977, which you enclose, the charge is assessed for the maintenance and operation of fire lines, standpipes and fire hydrants in structures which require such connections in sizes exceeding those provided domestic users. The charges are authorized by city ordinance, enacted, presumably in the exercise of the city's home rule powers under Article 12, § 5 of the Kansas Constitution, and constitutes a lawful assessment or billing which, in my judgment, is within the authority of the State of Kansas to pay.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj