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ATTORNEY GENERAL OPINION NO. 78- 300

Honorable J.E. "Ernie" Talley
State Representative
437 South Hydraulic
Wichita, Kansas 67211

Re: Commission--Public Utilities--Energy Conservation

Synopsis: The order of the Kansas Corporation Commission, entered May 13, 1977, prescribing certain thermal standards and energy efficiency ratios for air conditioning equipment applicable to residential and commercial structures which seek service on and after November 7, 1977, did not exceed the statutory authority of the Commission.

* * *

Dear Representative Talley:

By an order dated May 13, 1977, the Kansas Corporation Commission has prescribed certain thermal standards to be met by all new residential and commercial buildings, which apply to be furnished service by natural gas and electric utilities under the jurisdiction of the Kansas Corporation Commission. These standards were to be implemented as of November 7, 1977.

You request my opinion concerning the authority of the Commission to issue the order. K.S.A. 66-101 describes its basic authority thus:

"The state corporation commission is given full power, authority and jurisdiction to supervise and control the public utilities, . . . doing business in the state of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction."

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K.S.A. 66-110 enlarges upon the authority of the Commission in pertinent part thus:

"It shall be the duty of the commission, either upon complaint or upon its own initiative, to investigate all rates, joint rates, fares, tolls, charges and exactions, classifications or schedules of rates, or joint rates and rules and regulations, and if after full hearing and investigation the commission shall find that such . . . are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have power to fix and order substituted therefor such rate or rates, fares, tolls, charges, exactions, classifications or schedules of rates or joint rates and such rules and regulations as shall be just and reasonable."

The proceedings leading to the order in question here were initiated by an order of the Commission entered February 25, 1977, directing jurisdictional natural gas and electric utilities to file amended tariffs providing that no new connections or attachments to their systems would be permitted providing for service to new residential dwellings and new commercial buildings which were not equipped with adequate insulation and air conditioning equipment having a satisfactory energy efficient ratio. After further hearings and investigation, its final order was issued. The hearings in the case led the Commission to make the following findings in support of the order. It found

"a continuing decline of petroleum and natural gas supplies in the United States and in Kansas, resulting in a need for stringent energy conservation measures now, rather than waiting for the energy crisis to worsen. This is particularly true in Kansas, which places great reliance on the use of natural gas in heating homes and commercial buildings, as well as generating electricity. Additionally, large amounts of electricity are used for space heating and air conditioning, both in homes and in commercial establishments. During the last 12 months, 66% of the electricity used in Kansas

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was generated by the use of natural gas and oil Oil reserves are declining by 3.5% a year and natural gas reserves are declining by 4.7% a year; production of these two products is declining at an even faster rate Residents of Kansas will be facing increasing energy costs, and action to reduce energy waste is essential to protect our dwindling supplies of natural gas and oil to the maximum extent possible. With few exceptions, all parties agreed with the Commission's action initiating these proceedings and felt it was essential that steps be taken to conserve energy by imposition of insulation requirements which would reduce heat loss and increase energy efficiency ratio (EER) of air conditioning."

In short, the Commission found that declining energy reserves and production, would lead to increased energy costs for Kansas users, and that conservation measures to reduce energy waste was necessary to reduce the effect of declining petroleum and natural gas supplies upon costs of service. The statutory language quoted above has been unchanged since 1911. It indicates the legislature's intention, however, to vest in the Commission the broadest possible authority over the operations of utilities under its jurisdiction. It may compel the utilities to adopt and enforce reasonable rules and regulations concerning the service which it provides, and to adopt "just and reasonable rules and regulations." K.S.A. 66-107. From your letter, it is clear that you do not question the reasonableness of the order of May 13, 1977, itself, but the authority of the Commission itself to issue the order, which you characterize as one "which on the surface is directed to public utilities but whose effect is upon, to a much greater extent, private industry within the state and to consumers"

Certainly, the Commission has no authority over energy conservation generally, to impose insulation and energy efficiency standards generally, independent of its authority over the service furnished by natural gas and electric utilities subject to its jurisdiction. Within the scope of its jurisdiction, however, it has broad authority to prescribe the standards and conditions of services furnished by its jurisdictional utilities. The conditions under which natural gas and electric service is furnished, whatever those conditions may be, have a substantial impact upon the economy and the day-to-day lives of those dependent upon such service. The order in question here certainly has a very apparent effect upon the building practices

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of those who would seek service for new structures after November 7, 1977. That fact alone does not draw into question the jurisdiction of the Commission to act in the matter, in my judgment. Its authority over public utilities in this state is prescribed by the applicable statutes in the broadest possible terms. I find no justification for restricting that expressly comprehensive authority by implied limitations, such as the relative impact of an order upon the utilities regulated and those whom they serve. In my judgment, the Commission did not exceed its statutory jurisdiction in the issuance of an order prescribing minimum energy conservation features in new structures to be served by its jurisdictional utilities on and after November 7, 1977.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj