



STATE OF KANSAS

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May 4, 1979

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ATTORNEY GENERAL OPINION NO. 79- 80

Mr. David K. Clark  
Altoona City Attorney  
609 Monroe  
Fredonia, Kansas 66736

Re: Cities and Municipalities -- Ordinances -- Payment  
of Utility Bills

Synopsis: An ordinance imposing liability for the payment of all charges for electric and water utility services on owners of real property to which water and electric services are provided, and further providing for concurrent liability with any person or persons residing upon the real property who may be deemed to be the actual user or users of the services, is valid and does not violate the provisions of the Fourteenth Amendment of the United States Constitution.

Where the legislature is empowered to enact a statute making a property owner liable for the electricity or water furnished by the city to its tenants, a city also may do so under its home rule powers prescribed by Article 12, Section 5, of the Kansas Constitution.

\* \* \*

Dear Mr. Clark:

As city attorney for the City of Altoona, Kansas, you have requested our opinion concerning the validity of a proposed ordinance which will make property owners responsible for payment of the electric and water bills of tenants receiving the service who would be concurrently liable.

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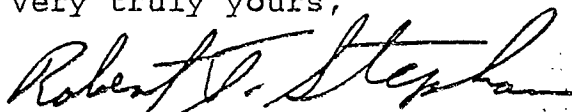
The situation you have presented is identical to that sought in Attorney General Opinion No. 74-57 rendered by this office on February 15, 1974. The pertinent part of the ordinance which served as a basis for that opinion was: "The property owner shall be responsible for paying for water used by the users living on his property." In that matter, as here, the question presented is whether the effect of such an ordinance requiring a property owner to pay deprives him of due process of law.

Our research merely serves to confirm the conclusions reached in the aforementioned opinion, a copy of which is enclosed for your review. Although there have been no Kansas cases touching specifically on the question presented here, we concur with the reasoning of that opinion.

In our judgment, an ordinance authorizing the collection of utility bills for electric and water services in the manner proposed is clearly within the powers and authorities granted cities under Article 12, Section 5, of the Kansas Constitution, the so-called home rule provisions which empower cities to determine their local affairs and government. Further, for the reasons elaborated upon in the attached opinion regarding constitutionality of such an ordinance, it is our opinion that Altoona's proposed ordinance does not constitute a taking of property without due process of law, nor is it violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Therefore, we conclude that a city may, by ordinance, make real property owners concurrently liable for electric and water service charges to anyone residing on the property who is deemed to be the actual user of the services.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



CARL M. ANDERSON  
Assistant Attorney General

RTS:CMA:vls  
Enc.