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December 4, 1979

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ATTORNEY GENERAL OPINION NO. 79- 273

Mr. Leland E. Rolfs
Kansas Water Resources Board
Suite 303, 503 Kansas Avenue
Topeka, Kansas 66603

Re: Public Utilities--Jurisdiction and Powers of
State Corporation Commission--Utilities Subject
Thereeto

Synopsis: The Kansas Corporation Commission does not have jurisdiction over either rural water districts, K.S.A. 82a-612 et seq., or Public Wholesale Water Supply Districts, K.S.A. 1978 Supp. 19-3545 et seq., in that both are quasi-municipal corporations. As a consequence, the Kansas Corporation Commission is not empowered to set rates for or review the rates of either of these two quasi-municipal corporations.

* * *

Dear Mr. Rolfs:

You have requested the opinion of this office concerning two interrelated questions dealing with the power of the Kansas Corporation Commission (KCC) over rural water districts created pursuant to K.S.A. 82a-612 et seq., and public wholesale water supply districts, K.S.A. 1978 Supp. 19-3545 et seq. You inquire both as to the KCC's jurisdiction in general and as to the setting or reviewing of rates in particular. We understand that you earlier directed these same inquiries to the KCC, a copy of whose answer accompanied your request. We would concur in the Commission's conclusions, if not entirely in its reasoning.

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To begin with, pursuant to K.S.A. 66-101 the KCC has jurisdiction over "public utilities" and "common carriers" doing business in the State of Kansas. As the latter term is clearly not relevant in this inquiry, it remains to determine the meaning of the term public utility. K.S.A. 1978 Supp. 66-104 is of some assistance, for it is therein stated that "[t]he term 'public utility,' as used in this act, shall be construed to mean . . . all companies for the production, transmission, delivery or furnishing of heat, light, water or power." (Emphasis added.) Can a rural water district or a public wholesale water supply district be classified as a "company," or are they in fact something more?

The statutes would seem to indicate that in both cases the entities involved here are quasi-municipal corporations. K.S.A. 82a-616, 19-3545, 19-3549. That term is defined by McQuillan in The Law of Municipal Corporations (3rd Ed. 1971) as follows at §2.13:

"As the term is used herein, what is meant is a corporation created or authorized by the legislature which is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective. In other words, a quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for the general welfare. 'Quasi-municipal' corporations are public in nature, but not, strictly speaking, municipal corporations. They are bodies which possess a limited number of corporate powers and which are low down in the scale or grade of corporate existence, and consist of various local government areas established to aid the administration of public functions." (Emphasis added.)

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As may be seen from the above, the districts involved here are a very different kind of entity than is a full-fledged utility of the kind regulated by the KCC. While it may be within the legislature's power to subject those quasi-corporations which are created to aid in the administration of public functions to the authority of the KCC, the statute (K.S.A. 1978 Supp. 66-104) would not seem to envisage such a result, and without such an indication of intent we are not prepared to conclude that it exists.

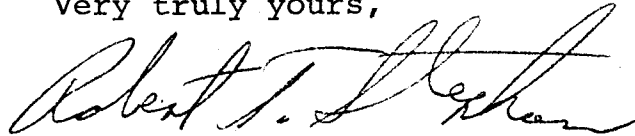
Another indication that this is a correct result may be seen in the treatment which 66-104 gives to municipal corporations (i.e., cities) which own or operate utilities located in or within three miles of the city's corporate limits. Such utilities are expressly placed outside the scope of the KCC's jurisdiction, with case law indicating that the local municipality has control over the utility's operations. Admittedly, while there are differences between a municipal corporation, such as a city, and a quasi-municipal corporation, such as the types of districts involved here, the exclusion of the former, coupled with the lack of any indication that the KCC's jurisdiction was to extend to the latter, supports our conclusion that utility services provided by local units of government are not within the scope of K.S.A. 66-101 et seq.

Your second inquiry concerns the authority of the KCC to set or review rates charged by either of these districts. At the present time this question has not been answered directly by Kansas statutes or case law. However, based on our conclusion above, it is our opinion that quasi-municipal corporations, such as rural water and public wholesale water supply districts, should be treated like municipal corporations, whose power to set the rates for their own utilities is well-recognized. Holton Creamery v. Brown, 137 Kan. 418 (1933); Wichita Water Co. v. Public Service Commission, 126 Kan. 381 (1928). Additionally, the rates of another rural water district were the subject of review in Shawnee Hills Mobile Homes, Inc. v. Rural Water Dist., 217 Kan. 421 (1975). There, the Court notes that the district was a quasi-municipal corporation, and that (presumably as a result) no claim had been made that it was subject to supervision or control by the KCC. 217 Kan. at 428.

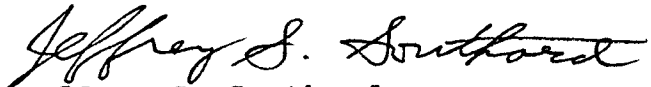
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Accordingly, it is our opinion that the KCC does not have jurisdiction over either rural water districts or public wholesale water supply districts. It is our further opinion that the KCC is not empowered by statute or case law to set or review the rates of either of these two quasi-municipal corporations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:JSS:gk