



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 80-113

Mr. Thomas L. Wilson
Woodson County Attorney
P. O. Box 181
Yates Center, Kansas 66783

Re: Public Utilities -- Jurisdiction and Power of the
State Corporation Commission -- Late Payment Charges

Synopsis: The legislature has vested broad regulatory authority over public utilities in the State Corporation Commission. Where lawful and reasonable orders, issued by the State Corporation Commission, in compliance with a decision by the Kansas Supreme Court, compel changes in the handling of late payment charges on utility bills, the Woodson County Commissioners must either change their payment date accordingly, or pay the late charges. Cited herein: K.S.A. 66-101, K.S.A. 1979 Supp. 66-104, 66-118d.

* * *

Dear Mr. Wilson:

You inquire whether Woodson County is liable to the Kansas Gas and Electric Company (KG&E) for late payment charges resulting from delinquent electricity bills in view of changes in that utility's billing policy, which was ordered by the State Corporation Commission (Commission) in November, 1977.

The legislature has vested broad regulatory authority over public utilities in the Commission, as reflected in K.S.A. 66-101, which states:

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"The state corporation commission is given full power, authority and jurisdiction to supervise and control the public utilities, including radio common carriers, and all common carriers, as hereinafter defined, 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."

KG&E is one of many public utilities defined in K.S.A. 1979 Supp. 66-104, which comes under the Commission's umbrella of regulatory authority. The question herein results from a change in the treatment of late payment charges on delinquent utility bills which was precipitated by the Kansas Supreme Court's decision in the case of Jones v. Kansas Gas and Electric Co., 222 Kan. 390 (1977). Prior to that decision KG&E had a uniform, one-time late payment penalty (similar to the practices of most utilities) which was approved by the Commission. The Court concluded that a uniform late payment penalty was unreasonable because there was one class of late payers who paid after the penalty was imposed but before collection efforts were initiated, and a second class who did not pay until after the utility was forced to make additional collection efforts. Id. at 401. In recognizing the general rule that one class of utility customers should not be burdened with costs created by another class, the Court stated that the late paying customers who caused the utility to incur collection costs should pay a charge greater than that imposed on the late payers who do not cause collection costs. Id. at 401 & 402. Thereafter, on the remand of the Commission's docket number 96,137-U, the Commission ordered KG&E to implement a new procedure for the handling of late payments in accordance with the provisions of its orders in that docket dated November 10, 1977, and November 28, 1977. Further modifications involving late payment charges occurred as the result of a general investigation initiated by the Commission in docket number 114,337-U and the subsequent order of the Commission therein, dated August 21, 1979.

The rule established in the Jones case (that one class of customers should not be burdened with costs created by another) was subsequently addressed by the Commission in its general investigation when the State of Kansas requested that it be exempt from late payment charges because the state's accounting process would not permit timely payment, and because there was

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no risk of nonpayment. In rejecting the argument that the State of Kansas should be considered as a special customer, the Commission succinctly pointed out at pp. 9 & 10 of its order:

"We do not believe that it is appropriate to shift additional costs caused by late payments of the State to the respective utilities and their customers. Late payment charges or costs involved in avoiding late payment charges, which are incurred by the State should be included in the State's costs of operation, just as they are for other large utility customers. An exception is not warranted merely because the State can be relied upon to eventually pay its bills. Other utility customers could make the same claim but it has not been suggested that they should also be exempt from delinquency charges. The solvency of the State and other utility customers is a consideration more appropriate in regard to security deposits than late payment charges."

It is abundantly clear from this order and the remand orders in docket number 96,137-U that all customers are to be treated the same with respect to the imposition of late payment charges. Accordingly, it is our opinion that the changes in KG&E's billing practices were in accordance with the mandates of the Commission's orders and consonant with the decision in Jones, supra. Unless such orders are found to be unlawful and unreasonable pursuant to K.S.A. 1979 Supp. 66-118d, a reviewing court cannot set a Commission order aside. Where the prescribed statutory and procedural rules have been followed in making an order, it is not unlawful. See Southern Kansas Stage Lines Co. v. Public Service Comm., 135 Kan. 657 (1932). In Graves Truck Lines, Inc., v. State Corporation Commission, 215 Kan. 565 (1974), the Court reiterates its long-standing holding that an order is generally reasonable if it is based on substantial competent evidence. The Court stated further that, "[s]ubstantial competent evidence is evidence which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved." Id. at 569. We are not advised of any grounds upon which Woodson County might challenge the reasonableness of the late charges or the Commission's orders cited herein. Absent a showing that Woodson County is somehow unique and should be treated differently, we see no basis for arguing that the special status denied the State of Kansas should be extended to one of its local governing units.

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Therefore, it is our opinion that where lawful and reasonable orders, issued by the State Corporation Commission, in compliance with a decision by the Kansas Supreme Court, compel changes in the handling of late payment charges on utility bills, the Woodson County Commissioners must either change their payment date accordingly, or pay the late charges.

Sincerely,


ROBERT T. STEPHAN
Attorney General of Kansas


CARL M. ANDERSON
Assistant Attorney General

RTS:CMA:vls