



STATE OF KANSAS

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August 13, 1981

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ATTORNEY GENERAL OPINION NO. 81-191

Edwin M. Wheeler, Jr.
City Attorney
P. O. Box A
Marion, Kansas 66861

Re: Cities and Municipalities -- Ordinances of Cities --
Retroactive Increase of Utility Rates

Synopsis: A municipal ordinance which increases rates for
electricity furnished by a municipal utility may
not be applied retroactively, since such action
violates federal and state constitutional prohi-
bitions against laws impairing the obligation of
contract. Cited herein: K.S.A. 12-3007.

* * *

Dear Mr. Wheeler:

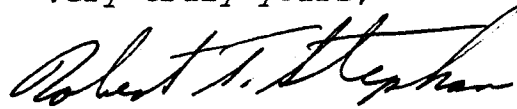
As attorney for the city of Marion, you request our opinion as to the application of Marion City Ordinance No. 969. Said ordinance, which was approved by the city council on April 20, 1981, and published on April 22, 1981, increased the rates charged for electricity furnished by the city to electrical consumers. The question which has arisen is whether the city may utilize the increased rate structure in billing consumers for electricity consumed from March 10, 1981, to April 10, 1981, even though such electrical consumption occurred prior to adoption of the ordinance increasing the rates.

Pursuant to the provisions of K.S.A. 12-3007, city ordinances become effective on the day of publication, unless a different and later day is stated in the ordinance or specified by statute. Therefore, Marion City Ordinance No. 969 became effective on April 22, 1981, and the increased electrical rates apply as of that date. However, it is well-established

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that a municipality may not retroactively increase utility rates, since such action violates federal and state constitutional prohibitions against laws impairing the obligation of contract. See Southwestern Bell Telephone Co. v. Kansas State Corporation Commission, 53 P.U.R. 3d 337 (1964) (unpublished opinion); State, ex rel., v. Public Service Comm., 135 Kan. 491, 503. (1932); Daniel v. Borough of Oakland, 304 A.2d 758 (New Jersey, 1973); 12 McQuillin Mun. Corp. (3rd Ed.) §35.37a. Accordingly, it is our opinion that the city of Marion may utilize the increased rates only for electricity consumed on and after April 22, 1981 (the effective date of Ordinance No. 969), and such increased rates may not be used in computing bills for electricity used from March 10, 1981, to April 10, 1981.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:RTH:hle