



STATE OF KANSAS

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January 20, 1982

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ATTORNEY GENERAL OPINION NO. 82-12

Gayle Mollenkamp, Commissioner  
Logan County Commission  
Box 5, Star Route  
Russell Springs, Kansas 67755

Re: Oil and Gas -- Cementing Surface Pipe -- Avoidance  
of Water Pollution; Criminal Penalties for Non-  
Observance

Synopsis: K.S.A. 55-136 et seq. require the surface pipe of any oil or gas well to be cemented below the fresh water strata, in order to protect such strata from pollution, and apply both to wells drilled with rotary equipment or cable tools. The act is supplemented by rules and regulations adopted by the Kansas Corporation Commission, and contains criminal penalties for any person, firm, association or corporation who violates any of the sections thereof. While responsibility for the enforcement of such criminal penalties lies with district and county attorneys, insofar as the act is uniformly applicable to all counties, a county may not employ its home rule authority to enact a resolution on this same subject. Cited herein: K.S.A. 55-136, 55-137, 55-138, K.A.R. 82-2-123, Kansas Constitution, Article 12, Section 5.

\* \* \*

Dear Commissioner Mollenkamp:

As County Commissioner for the Third District in Logan County, you request our opinion on a question involving pollution caused by the drilling of oil and gas wells. Specifically, you inquire whether the county may establish its own standards to avoid pollution of fresh water sources.

As you note, K.S.A. 55-316 et seq. does speak to this same subject matter, K.S.A. 55-136 providing that:

"It shall be unlawful for any person, firm, association or corporation having possession or control of any well being drilled with rotary tools or equipment, for oil or gas, either as contractor, owner, lessee or manager or in any other capacity, to test, complete or abandon such well, unless such person, firm, association or corporation shall have cemented in the surface or drive pipe below the fresh water strata and shall have cemented in additional pipe as shall be necessary to protect from pollution such fresh water strata or any usable water strata in conformance with rules and regulations which the state corporation commission shall adopt and promulgate in accordance with the joint recommendations of the secretary of health and environment, state geological survey, and state water resources board. The casing of any well shall be subject to inspection by the state corporation commission and shall be of proper weight and of good quality.

"As used in this section, 'fresh water' shall mean water containing not more than five hundred (500) parts per million, chlorides, and 'usable water' shall mean water containing more than five hundred (500) parts per million, and not more than five thousand (5,000) parts per million chlorides.

"Any person, firm, association or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000), in the discretion of the court."

K.S.A. 55-137 is identical, except for the drilling method (use of cable tools) that is specified. K.S.A. 55-138 requires the filing of affidavits of compliance with the Kansas Corporation Commission (KCC) and prescribes criminal penalties for a failure to do so.

In your letter, you indicate that the only source of fresh water underlying southern Logan County is a rock strata known as the Dakota Formation. You believe that this formation is being imperiled by the activities of oil companies who are failing to cement the surface pipe (i.e., that casing which is closest to the bore wall) down to a level of 1,500 feet so as to protect the fresh-water bearing strata. Furthermore,

you indicate that while the KCC and the Department of Health and Environment have been contacted, to date the problem persists. Accordingly, you inquire concerning the home rule authority of Logan County to require the drillers of oil wells to set 1,500 feet of 8 3/4 inch surface pipe so as to safeguard the Dakota Formation from pollution.

In our opinion, such a course of action is not open to the county under the home rule power granted by K.S.A. 19-101 et seq. We base this result on the wording of K.S.A. 1980 Supp. 19-101a, wherein counties are made subject "to all acts of the legislature which apply uniformly to all counties." While the effect of similar language applicable to cities (contained in Article 12, Section 5 of the Kansas Constitution) has been held to render entire acts non-uniform on the basis of a single section [City of Junction City v. Griffin, 227 Kan. 332 (1980)], no such non-uniform language appears in this act. Nor can it somehow be argued that the type of regulation contemplated by the county commission is outside the scope of the act. The language of K.S.A. 55-136 and 55-137 is explicit in empowering the KCC to adopt rules and regulations which govern which strata are to be protected. K.A.R. 82-2-123. This regulation, it may be noted, prescribes depths to which cement must be poured which were determined following consultation with the Department of Health and Environment, the Kansas Geological Survey and the Kansas Water Resources Board (now the Kansas Water Office). This is a further indication of the statewide nature of the problem, and of the resulting inapplicability of county home rule.

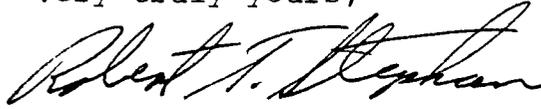
However, we should note that local authorities are not entirely powerless. As mentioned earlier, the act establishes criminal penalties for violations, which penalties consist of fines from \$300 up to \$1,000. As is the case for all criminal statutes of this state, enforcement is primarily the responsibility of the county or district attorney. K.S.A. 19-702, State ex rel. v. Baird, 117 Kan. 549 (1925). Accordingly, while the county commission is without the power to set limits to which oil companies must cement the surface pipe in oil wells, the county attorney may enforce K.S.A. 55-136 et seq. if standards set by the KCC are ignored or not fully met.

In conclusion, K.S.A. 55-136 et seq. require the surface pipe of any oil or gas well to be cemented below the fresh water strata, in order to protect such strata from pollution, and apply both to wells drilled with rotary equipment or cable tools. The act is supplemented by rules and regulations adopted by the Kansas Corporation Commission, and contains criminal penalties for any person, firm, association or corporation who violates any of the sections thereof. While responsibility for the enforcement of such criminal penalties

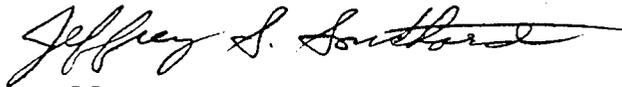
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Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle