



STATE OF KANSAS

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April 23, 1982

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82-94

The Honorable G. M. Wells
Mayor, City of Enterprise
Enterprise, Kansas 67441

Re: Cities and Municipalities--Ordinances of Cities--
Applicability of Initiative and Referendum Ordinances
to Sale of Electric Utility Transmission System

Synopsis: A proposed ordinance authorizing the sale of an
electric utility transmission system owned by a
city of the third class is not a proper subject of
an initiative petition under the provisions of
K.S.A. 1981 Supp. 12-3013. Cited herein: K.S.A.
12-3013, 15-809.

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Dear Mayor Wells:

You request our opinion as to whether a proposed ordinance
authorizing the sale of the electric utility transmission system
owned by the city of Enterprise is a proper subject of an initia-
tive petition. The proposed ordinance provides, in part, that

"[t]he City of Enterprise by and through
its duly elected official [sic] are hereby
authorized and shall sell the municipally
owned electric light transmission system,
machinery, equipment and supplies to Kansas
Power and Light Company for the sum of
\$120,000.00 plus costs of the special election."

The provisions of K.S.A. 1981 Supp. 12-3013 provide a procedure whereby a city's electors may initiate by petition any proposed ordinance, except the three types of ordinances enumerated in subsection (e) of the statute. One of the types of ordinances which is not subject to the initiative and referendum process is an ordinance which is "subject to referendum or election under another statute." K.S.A. 1981 Supp. 12-3013(e)(3). In this regard, we note that the sale of an electric distribution system owned by a city of the third class is subject to a referendum pursuant to the provisions of K.S.A. 1981 Supp. 15-809, which statute provides as follows:

"Any city of the third class in the state of Kansas which owns an electric light or waterworks plant, electric transmission line, or water, gas or electric distribution system may sell the same except that the sale shall not be made until the proposition of whether to sell has been submitted to a vote of the qualified electors of the city. If a majority of the qualified electors of the city vote in favor of the sale, the governing body may dispose of the plant, transmission line or distribution system, according to the proposition voted on at the election. The proposition submitted to the electors shall contain a statement of the proposed sale price and the name of the purchaser.

"When the governing body decides to put the proposition to a vote, it shall pass an ordinance calling an election to be held within 40 days after the passage of the ordinance. The mayor shall cause a notice of the election to be published once a week for two consecutive weeks, the first publication to be not less than 21 days preceding the election. The notice shall state the purpose of the election, giving the sale price and the name of the purchaser, the date of the election, and the places of voting. The proposed purchaser shall bear all the expense of the election.

"All sales shall be for cash, and the proceeds of the sale shall be applied upon the payment of any outstanding bonds or obligations incurred in the purchase, erection or improvement of the property sold. The excess, if any, shall be paid into the general fund of such city. If

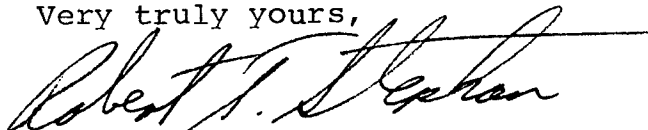
The Honorable G. M. Wells
Page Three

the city is unable to purchase the unmatured bonds issued for the purchase, erection or improvement of the property sold, the governing body may invest the money necessary to take up such bonds at maturity in investments authorized by K.S.A. 1980 Supp. 12-1675 and amendments thereto in the manner prescribed therein or in any municipal bonds of this state, which shall become due prior to the due date of the bonds issued for the purchase, erection or improvement of the property sold, or in government bonds or federal landbank bonds. The purchase price and proceeding of the sale shall be filed with the state corporation commission." (Emphasis added.)

Since the city of Enterprise is a city of the third class, the above-quoted statute is applicable, and any sale of the city-owned electric distribution system is subject to a referendum thereunder. Therefore, pursuant to K.S.A. 1981 Supp. 12-3013(e)(3), the initiative and referendum process (set forth in K.S.A. 12-3013) is not applicable to the proposed ordinance, set forth above, since said ordinance is "subject to referendum or election" under K.S.A. 1981 Supp. 15-809.

In summary, it is our opinion that a proposed ordinance authorizing the sale of an electric utility transmission system owned by a city of the third class is not a proper subject of an initiative petition under the provisions of K.S.A. 1981 Supp. 12-3013.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm