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August 17, 1983

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ATTORNEY GENERAL OPINION NO. 83- 124

The Honorable Bill Q. McCray
Senator, Twenty-ninth District
1532 North Ash
Wichita, Kansas 67214

RE: Cities and Municipalities and Public Utilities
-- Municipal and Public Utilities -- Termination
of Electric, Gas or Water Service

Synopsis: Utility services such as electricity, gas and
water, provided solely by municipally owned
or public utilities to their customers, are
constitutionally protected property rights which
cannot be terminated unless due process procedures
of notice and the opportunity to be heard have
been met. Cited herein: Fourteenth Amendment,
U.S. Constitution.

* * *

Dear Senator McCray:

You have requested our opinion about whether a utility company has the constitutional right to cut off service to an individual without first meeting the due process requirements of adequate notice and an opportunity to be heard.

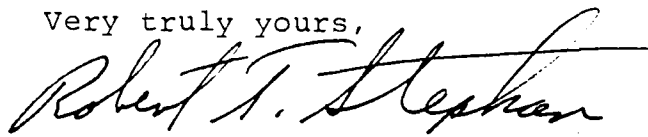
This question, as it pertained to a municipally owned water system, was addressed in Attorney General Opinion No. 81-100, a copy of which is enclosed. It should be noted it is generally recognized that public utilities, as well as those which are municipally owned, also have the power and authority to discontinue a consumer's service for nonpayment of bills. The matter of discontinuing utility service by public utilities was detailed with specificity in an Order (dated August 21, 1979) entered by the

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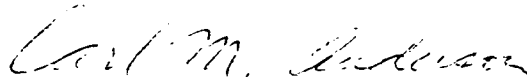
State Corporation Commission in Docket No. 114, 337-U, entitled "In the matter of a general investigation to establish a policy concerning billing practices, security deposits, late payment charges and discontinuances of services." Section IV of that order, "Standards of Discontinuance of Service Practices," clearly enunciates the customers right to notice and the opportunity to be heard.

Services such as electricity, gas and water provided by municipally owned or public utilities, which are the sole source of such life-sustaining services are considered to be entitlements or property rights protected by the due process clause of the Fourteenth Amendment of the United States Constitution. Dedeke v. Rural Water Dist. No. 5, 229 Kan. 242, 247; Stanford v. Gas Service Company, 346 F. Supp. 717(D.Kan. 1972); Donnelly v. City of Eureka, Kansas, 399 F. Supp. 64 (D.Kan. 1975); Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 56 L.Ed 2d 30, 98 S.Ct. 1554 (1978). Thus, before any customer's electric, gas or water services are discontinued, due process guarantees must be afforded that customer. The utility offering the service must, therefore, give customers adequate notice of the pending termination of service, and an opportunity to contest the grounds for termination.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Carl M. Anderson
Assistant Attorney General

RTS:BJS:CMA:ljh