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October 7, 1983

ATTORNEY GENERAL OPINION NO. 83- 153

L. Franklin Taylor
DeSoto City Attorney
Payne & Jones, Chartered
P.O. Box 10
The Tower Building
200 South Chestnut
Olathe, Kansas 66061

Re: Cities and Municipalities--Franchises--Granting
of Franchises

Cities and Municipalities--Ordinances of Cities--
Applicability of Initiative and Referendum Ordinance
to Municipal Franchise

Synopsis: K.S.A. 12-824 and 12-2001 et seq. provide separate
and distinct alternative procedures which a city
may utilize in granting a franchise to a public
utility.

A proposed ordinance which would grant a franchise
to sell and distribute electricity within a city,
pursuant to either K.S.A. 12-824 or K.S.A. 12-2001,
is not a proper subject of an initiative petition
under the provisions of K.S.A. 12-3013. Cited herein:
K.S.A. 12-824, 12-2001, 12-3013.

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Dear Mr. Taylor:

You request our opinion regarding several questions related
to granting municipal utility franchises.

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Your first question is whether K.S.A. 12-874 and 12-2001 are equally applicable to the granting of a franchise to Kansas Power & Light Company by the city of DeSoto for the purpose of furnishing electric power to retail customers within the city. In response thereto, we enclose a copy of Kansas Attorney General Opinion No. 75-432, wherein it was concluded that K.S.A. 12-824 and K.S.A. 12-2001 et seq. provide separate and distinct alternative procedures which a city may utilize in granting a franchise to a public utility.

Your second question is whether a proposed franchise ordinance is a proper subject of an initiative petition. The proposed ordinance would grant a franchise to Kansas Power & Light Company to sell and distribute electricity within the city of DeSoto, Kansas, pursuant to the provisions of K.S.A. 12-824.

K.S.A. 12-3013 prescribes 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. 12-3013(e)(3). In this regard, we note that municipal franchises granted pursuant to K.S.A. 12-824 are subject to referendum under the procedure prescribed in said statute. Specifically, K.S.A. 12-824 provides, in part, as follows:

"All incorporated cities in the state of Kansas . . . into or through which any corporation operating a system for the transmission of electric current between two or more incorporated cities in the state shall have heretofore built, or into or through which any such corporation may propose to build its transmission lines, are hereby authorized and empowered upon such terms and conditions, as any such city may by ordinance prescribe, to grant franchises to such . . . transmission corporations for any public utility purposes for which they are or hereafter may be incorporated, for a period not greater than the time for which the charter under which said company or corporation is then operating shall continue to run but in no case to exceed 35 years: Provided, That such franchise shall not be granted until notice of the proposition to grant the same has been

given for twenty days by publication in some newspaper in general circulation in such city, and if within said twenty days 10 percent of the legal electors petition such city authorities to submit the same to a vote of the electors of the city, such city authorities shall submit said franchise proposition to a vote of the people before such franchise be granted and be governed by result of such vote" (Emphasis added.)

It is clear that any proposal to grant a municipal franchise pursuant to the above statute is subject to a referendum, under the conditions set forth in the statute. Therefore, pursuant to K.S.A. 12-3013(e)(3), it is our opinion that the initiative and referendum process (set forth in K.S.A. 12-3013) is not applicable to a proposed ordinance which would grant such a municipal franchise, since said ordinance is "subject to referendum or election" under K.S.A. 12-824.

Finally, you ask whether an ordinance granting a utility franchise under K.S.A. 12-2001 is a proper subject of an initiative petition. Subsection (b)(6) of the aforesaid statute prescribes the procedure for adopting such an ordinance, and provides, in part, as follows:

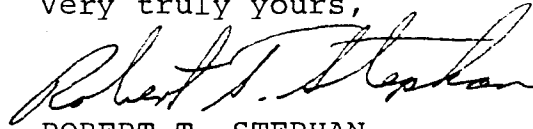
"No such right, privilege or franchise shall ever be granted until the ordinance granting the same has been read in full at three regular meetings of the governing body. Immediately after the final passage, the ordinance shall be published in the official city paper once a week for two consecutive weeks. Such ordinance shall not take effect and be in force until after the expiration of 60 days from the date of its final passage. If, pending the passage of any such ordinance or during the time between its final passage and the expiration of (60 days) before such ordinance takes effect, 20% of the qualified voters of such city voting for mayor, or in case no mayor is elected then the commissioners or council member receiving the highest number of votes, at the last preceding city election present a petition to the governing body asking the the franchise ordinance be submitted for adoption to popular vote, the

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mayor of the city shall issue a proclamation
calling a special election for that purpose."

It is clear that any proposal to grant a municipal franchise pursuant to the above statute is subject to a referendum, under the conditions set forth in the statute. Therefore, pursuant to K.S.A. 12-3013(e)(3), it is our opinion that the initiative and referendum process (set forth in K.S.A. 12-3013) is not applicable to an ordinance which would grant such a municipal franchise, since said ordinance is "subject to referendum or election" under K.S.A. 12-2001(b)(6).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm
Enclosure