



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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June 24, 1985

ATTORNEY GENERAL OPINION NO. 85-69

Richard F. Hrdlicka
Hesston City Attorney
809 North Main Street
Newton, Kansas 67114

Re: Cities and Municipalities--Public Utilities--Waterworks,
Fuel, Power and Lighting Plants; Use, Disposition and
Investment of Revenues

Synopsis: The provisions of K.S.A. 12-825g and subsection (b) of K.S.A. 12-825d prescribe procedures for establishing a community and utility promotion fund in certain cities of the second class, and limit transfers of surplus utility revenues to such a fund. Although subsection (a) of K.S.A. 12-825d authorizes the transfer of surplus utility revenues to the city general fund or any other city fund, second class cities which have established a community and utility promotion fund under the provisions of subsection (b) of the statute must, in the absence of a charter ordinance providing otherwise, comply with the restrictions prescribed therein when making transfers of surplus utility revenues to the community and utility promotion fund. Cited herein: K.S.A. 12-825d, 12-825g.

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Dear Mr. Hrdlicka:

You request our interpretation of K.S.A. 12-825d. Specifically, you advise that the City of Hesston, a city of the third class, has by Ordinance Number 140-1980-670 (copy attached hereto as Exhibit "A") made the provisions of subsection (b) of K.S.A. 12-825d, and the provisions of K.S.A. 12-825g, applicable to it, and has established a "community and utility promotion fund." You ask whether the city may transfer to that fund any surplus in its utility operating and sinking funds pursuant to the provisions of subsection (a) of K.S.A. 12-825d, or whether the city must comply with the restrictions imposed by subsection (b) in making such transfers.

K.S.A. 12-825g requires an election in second class cities to authorize the transfer of surplus utility revenues to a community and utility promotion fund, and prescribes purposes for which such a fund may be expended in second class cities. K.S.A. 12-825d restricts the use of revenues derived from the sale of utility services and provides for the transfer of surplus revenues in the following manner:

"Except as otherwise hereinafter provided, in any city of the first, second or third class owning a waterworks, fuel, power or lighting plant, the revenue derived from the sale and consumption of water, fuel, power or light shall not be paid out or disbursed except for the purpose of operating, renewing or extending the plant or distribution system from which such revenue was derived, the payment of interest on outstanding bonds issued for the construction, extension or purchase thereof, and the payment of the salaries of the employees. At any time that there may be a surplus of such fund, it shall, if needed to redeem bonds, be quarterly placed in a sinking fund, which shall only be used for the purpose of redeeming bonds that may have been issued for acquiring, renewing or extending said plant or distribution system, or making renewals or extensions thereto. When any surplus of either the operating fund or sinking fund is not needed for any of the above stated purposes, said surpluses:

"(a) May be transferred and merged into the

city general revenue fund or any other fund or funds of such city; or

"(b) upon approval of the voters as authorized by K.S.A. 12-825g, and amendments thereto, in cities of the second class having a population of not less than six thousand (6,000) and not more than twelve thousand(12,000) and which are located in a county having a total assessed taxable tangible valuation of not less than thirty-two million dollars (\$32,000,000) and not more than forty-five million dollars (\$45,000,000), a part of such surpluses may be annually transferred, for a period not exceeding five years, to a special fund, which shall be known as "the community and utility promotion fund," but the total amount transferred to such fund in any one calendar year shall not exceed (1) one percent (1%) of the gross income derived from the sale of water, fuel, power and light during the preceding calendar year by such city, or (2) ten thousand dollars (\$10,000), whichever amount is the lesser, and at no time shall there be more than fifty thousand dollars (\$50,000) in said fund, and the moneys in said fund may be expended for the purposes authorized by K.S.A. 12-825g, and amendments thereto; or

"(c) such surpluses, in whole or in part, may be set aside in a depreciation reserve fund of the utility which may be used as hereinabove provided, and which may be invested in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein or in United States government bonds or in municipal bonds of any county, township, city or school district in the state of Kansas where the bonded indebtedness thereof does not exceed fifteen percent (15%) of its total assessed valuation as shown by the last assessment preceding such investment."

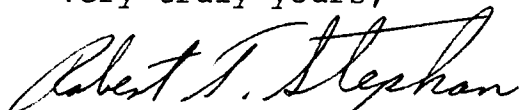
In construing this statute, we must follow pertinent rules of statutory construction recognized in this state. Specifically, it has been held that it is the duty of a court to reconcile the various provisions of a statute so as to make them harmonious and sensible, and to give effect to the entire statute and every part

thereof. Farm & City Ins. Co. v. American Standard Ins. Co.,
220 Kan. 325, 332 (1976).

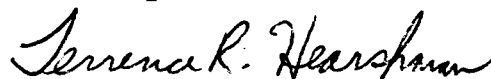
In this regard, subsection (b) of the above-quoted statute imposes restrictions upon transfers of surplus utility revenues to community and utility promotion funds established by certain cities of the second class, while subsection (a) of the statute authorizes an unrestricted transfer of surplus revenues to any city fund. If the legislature intended by subsection (a) to authorize transfers without restriction to a community and utility promotion fund, the restrictions upon such transfers prescribed by subsection (b) would be both contradictory and ineffectual. Therefore, in accordance with the above-stated rule of statutory construction, it is our opinion that cities of the second class which have established a community and utility promotion fund under the provisions of subsection (b) of K.S.A. 12-825d must, in the absence of a charter ordinance providing otherwise, comply with the restrictions prescribed therein when making transfers of surplus utility revenues to a community and utility promotion fund.

In regard to the community and utility promotion fund of the City of Hesston (which is, as noted above, a third class city), it is our opinion that the restrictions of K.S.A. 12-825g and subsection (b) of K.S.A. 12-825d do not apply to said fund except through Ordinance Number 140-1980-670. Therefore, the governing body of Hesston may make those restrictions inapplicable to the city by amending Ordinance Number 140-1980-670.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

TRH:jm
Attachment

A CHARTER ORDINANCE ALLOWING THE CITY OF HESSTON, KANSAS, TO ADOPT K.S.A. 12-825d, SUB-SECTION (b), AND 12-825g, AS AMENDED: PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT: AUTHORIZING THE CREATION OF A SPECIAL FUND FOR THE PURPOSE OF COMMUNITY AND UTILITY PROMOTION.

BE IT ORDAINED by the Governing Body of the City of Hesston, Kansas:

Section 1. The City of Hesston, Kansas, by the powers vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to adopt and make applicable to it K.S.A. 12-825d and 12-825g, as amended, and to provide substitute and additional provisions as hereinafter set forth in this Charter Ordinance. K.S.A. 12-825d and 12-825g are a part of an enactment of the legislature establishing a community and utility promotion fund from surplus utility moneys but is not applicable uniformly to all cities.

Section 2. The provisions of K.S.A. 12-825d shall apply to the City of Hesston in this manner:

A. Upon approval of the voters as authorized by K.S.A. 12-825g, and amendments thereto, a part of utility surpluses may be annually transferred, for a period not exceeding five years, to a special fund, which shall be known as "The Community and Utility Promotion Fund."

B. The total amount transferred to such fund in any one calendar year shall not exceed (1) one per cent (1%) of the gross income derived from the sale of water, fuel, power and light during the preceding year by such city, or (2) ten thousand dollars (\$10,000.00), whichever amount is the lesser, and at no time shall there be more than fifty thousand dollars (\$50,000.00) in said fund, and the moneys in said fund may be expended for the purposes authorized by K.S.A. 12-825g, and amendments thereto.

C. Such surpluses, in whole or in part, may be set aside in a depreciation reserve fund of the utility which may be used as herein above provided, and which may be invested in investments authorized by K.S.A. 12-1675 and amendments thereto.

Section 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper, and shall be in full force and effect sixty-one (61) days after its final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, of the Constitution of the State of Kansas, in which case the ordinance shall become effective only if approved by a majority of the electors voting thereon.

PASSED AND APPROVED by the Governing Body of the City of Hesston, Kansas, August 6, 1980.

Attest:

/s/

Hilton R. Miller, Mayor

/s/

Jean Krehbiel, City Clerk

(Seal)