



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 83

Mr. Robert L. Eastman
Edna City Attorney
127 W. 8th
Coffeyville, Kansas 67337

Re: Bonds and Warrants--Cash-Basis Law--Cash Basis
for Municipalities

Counties and County Officers--Water Supply and
Distribution Districts--Public Wholesale Water
Supply District Act

Synopsis: Pursuant to the provisions of K.S.A. 19-3548, a city and a public wholesale water supply district may enter into a water purchase contract for a term of forty years and any such contract may include an agreement for the purchase of water not actually received. Such a contract does not violate the cash-basis law (K.S.A. 10-1101 et seq.), and the obligation of a city thereunder is payable solely from the revenues produced by the city's water system. Cited herein: K.S.A. 10-1101; 10-1116; 10-1116b; 19-3545; 19-3546; 19-3548.

* * *

Dear Mr. Eastman:

You request our opinion on a question involving the cash-basis law. Specifically, you ask whether a contract (attached hereto as Exhibit 1) entered into pursuant to K.S.A. 19-3548 violates the cash-basis law. Additionally, you ask

what remedy is available to a public wholesale water supply district where a city fails to make required payments under a water supply contract authorized by K.S.A. 19-3548.

Generally speaking, political subdivisions and taxing districts of the state are prohibited from entering into obligations in excess of the amount of funds actually on hand by the Kansas Cash-Basis Law, K.S.A. 10-1101 et seq. In regard to municipal utility funds, subsection (b) of K.S.A. 10-1116 provides, in part, as follows:

"Notwithstanding any other limits of indebtedness prescribed under the provisions of article 11 of chapter 10 of Kansas Statutes Annotated the following funds shall have as a limit of indebtedness an amount equal to 100% of the accrued revenue of the current fiscal year plus any balances carried forward, cash reserves, inter-governmental grants, and sums advanced to qualify for inter-governmental grants:

. . . .

"(2) Enterprise funds set up in any municipality to account for the financing of self-supporting activities of governmental units which render services on a user charge basis to the general public such as municipal utilities engaged in the provision of water, electricity and natural gas and sanitary sewer systems which are financed by user charges."

K.S.A. 19-3548 authorizes "public agencies," including cities, to enter into water supply contracts with public wholesale water supply districts, and provides, in part, as follows:

"Any public agency, whether or not a party to an agreement pursuant to K.S.A. 19-3547, and any publicly or privately owned water distribution company may enter into contracts with any district created pursuant to the public wholesale water supply district act for the purchase of water from such district or the sale of water to the district, the treatment of

water by either party and/or the distribution or transmission of water by either party and any such district may enter into such contracts. Any such contract may include an agreement for the purchase of water not actually received. No such contract shall be made for a period in excess of forty years, but renewal options in favor of the purchasing entity may be included therein. The obligations of any public agency under any such contract shall be payable solely from the revenues produced from such public agency's water system and shall not be payable from any funds raised by taxation." (Emphasis added.)

In regard to whether the forty year contractual indebtedness authorized by the above-quoted statute violates the cash-basis law, it must be presumed that when the legislature enacted the provisions of K.S.A. 19-3545 et seq., in 1977, it was fully aware of all laws existing at that time, including the cash-basis law. See, e.g., Peter v. Peters, 177 Kan. 100, 107 (1954). Accordingly, when the legislature authorized the execution of forty-year water purchase contracts by any "public agency," we presume that it was aware that the large majority of public agencies (as that term is defined in subsection (a) of K.S.A. 19-3546) in this state are subject to the cash-basis law. The absence of any qualification of the contractual authority conferred by K.S.A. 19-3548 leads us to conclude that the contractual indebtedness authorized by that statute is not subject to the provisions of the cash-basis law. In this regard, since said contractual obligation is payable solely from revenues produced by a public agency's water system, the exception is somewhat similar to that which is prescribed by subsection (3)(b) of K.S.A. 10-1116b.

In response to your second question, as noted above, K.S.A. 19-3548 specifically provides that the obligation of any public agency under a water supply contract is payable solely from the revenues produced from such public agency's water system and shall not be payable from any funds raised by taxation. Accordingly, in our judgment, a city is obligated only to pay its contractual obligation from the revenues produced by its water system, and the remedy in the event of a default is to seek a judgment not exceeding 100% of such revenues.

In summary, pursuant to the provisions of K.S.A. 19-3548, a city and a public wholesale water supply district may enter into a water purchase contract for a term of forty years, and any such contract may include an agreement for the purchase of water not actually received. Such a contract does not violate the cash-basis law (K.S.A. 10-1101 et seq.), and the obligation of a city thereunder is payable solely from the revenues produced by the city's water system.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm

WATER PURCHASE CONTRACT

This contract for the sale and purchase of water is entered into as of the 24 day of July, 195, between PUBLIC WHOLESALE WATER SUPPLY DISTRICT #4, STATE OF KANSAS, (hereinafter called SELLER), and CITY OF EDNA, KANSAS, (hereinafter called BUYER).

WITNESSETH:

WHEREAS, SELLER is organized and established under the provisions of K.S.A. 19-3545 et seq, for the purpose of constructing and selling water to public agencies; and

WHEREAS, SELLER is in the process of building a water supply distribution system at a capacity capable of serving BUYER; and

WHEREAS, BUYER is a municipality under the laws of the State of Kansas and desires to purchase water from SELLER; and

WHEREAS, by resolution by the Board of Directors of SELLER enacted on the 24 day of July, 195, SELLER has agreed to sell to BUYER water under the terms of this contract; and

WHEREAS, by Resolution No. 48, the BUYER approved the purchase of water from SELLER in accordance with the provision of this contract and said contract was signed by the Mayor and attested by the City Clerk.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. SELLER agrees:

1. Quality and Quantity. To furnish BUYER at the point of delivery hereinafter specified during the term of this contract, or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State of Kansas, State Department of Health, in such quantity as may be required by the BUYER not to exceed 4,500,000 gal. 3,500,000 per month.

2. Point of Delivery and Pressure. Water will be furnished to BUYER at a reasonably constant pressure as indicated in this paragraph from an existing water line as set out in this paragraph at all points designated herein as follows:

Location	Water line Size	Pressure at Meter
Sw $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 29, T34S, R19E	6"	55 PSI

If a greater pressure than that normally available at the point of delivery is required by BUYER the cost of procuring such greater pressure shall be borne by BUYER. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the SELLER from this provision for such reasonable period of time as may be necessary to restore service.

MINIMUM WATER USAGE AGREEMENT

WHEREAS, Public Wholesale Water Supply District No. 4, (hereinafter called DISTRICT) has completed a water supply investigation to determine the feasibility of providing water to various municipalities and rural water districts; and

WHEREAS, City of Edna, Kansas, (hereinafter called PUBLIC AGENCY) desires to purchase water from the DISTRICT if facilities are built to provide such water;

NOW, THEREFORE, the parties for good and valuable consideration agree as follows: ~

1. PUBLIC AGENCY shall purchase a minimum amount of ~~1,000,000~~ ^{1,167,000} gallons of water per month from the DISTRICT if the DISTRICT proceeds to build a water plant and other facilities necessary to supply water to the PUBLIC AGENCY.
J.F. p. 11.
2. PUBLIC AGENCY shall purchase at least the monthly minimum amount set out in paragraph one of this agreement from the DISTRICT for a period of at least forty (40) years, or until complete payment of any indebtedness on all facilities built in order to supply water, whichever is later.
3. The parties agree that subsequent to the opening of bids for construction of water facilities, the DISTRICT engineer shall make a study to determine the initial cost of water for the PUBLIC AGENCY if the facilities are built. DISTRICT'S engineer thereafter shall send PUBLIC AGENCY'S representative on the governing body of the DISTRICT a certified letter indicating the estimated initial cost of water after construction is completed, and PUBLIC AGENCY shall have the right to cancel this agreement without any liability or obligation whatsoever (except for all obligations agreed to prior to the signing of this agreement by the PUBLIC AGENCY for expenses and the costs of feasibility studies) within ten (10) days after receipt of the certified letter if the DISTRICT engineers' determination is that the initial cost of water after construction will exceed \$3.62 per one thousand gallons.
4. Either party shall have the right to revoke and cancel this agreement by written notice to the other party at any time four years subsequent to the signing of this agreement if bids have not been awarded at that time for the construction of the necessary water facilities.
5. It is further agreed that the minimum water usage agreement entered into between the parties on September 28, 1982, is hereby revoked and cancelled.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officials, this _____ day of _____, 1983.

DISTRICT
PUBLIC WHOLESALE WATER SUPPLY
DISTRICT NO. 4

ATTEST:

By _____
President

Secretary

PUBLIC AGENCY

ATTEST:

By L. Rouse E. Erickson
Mayor

John Mearns

3. Metering Equipment. To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser but not more frequently than once every twelve (12) months. A meter registering not more than two per cent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the two months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless SELLER and BUYER shall agree upon a different amount. The metering equipment shall be read on the 25th day of each month. An appropriate official of the BUYER at all reasonable times shall have access to the meter for the purpose of verifying its readings.

4. Billing Procedure. To furnish BUYER at the above address not later than the last day of each month, with an itemized statement of the amount of water furnished the BUYER during the preceding month.

B. The BUYER agrees:

1. Rates and Payment Date. BUYER shall pay SELLER a water rate not to exceed the amount of \$3.62 per 1,000 gallons of water with payment to be made not later than the 15th day of each month for water delivered to BUYER. BUYER must purchase a minimum monthly commitment of ~~1,500,000~~ 1,167,000 gallons even if BUYER fails to use this amount.

C. It is Further Mutually Agreed Between SELLER and BUYER as follows:

1. Term of Contract. That this contract shall extend for a term of forty (40) years from the date of the initial delivery of any water as shown by the first bill submitted by SELLER to BUYER and thereafter this contract may be renewed or extended for such term or terms as may be agreed upon by BUYER and SELLER.

2. Delivery of Water. That 30 days prior to the estimated date of completion of construction of the SELLER's water supply distribution system, the SELLER will notify the BUYER in writing the date for the initial delivery of water.

3. Failure to Deliver. That the SELLER will, at all times,

operate and maintain the system in an efficient manner and will take such action as may be necessary to furnish the BUYER with quantities of water required by the BUYER. Temporary or partial failures to deliver water shall be extended shortage of water, or the supply of water available to the SELLER is otherwise diminished over an extended period of time, the supply of water to BUYER's consumers shall be reduced or diminished in the same ratio or proportion as the supply to SELLER's consumers is reduced or diminished.

4. Refund for Overage. If BUYER fails to use its minimum monthly commitment for any month, BUYER shall pay the minimum obligation for said month. At the end of each year, SELLER shall add up the total dollar amount paid by BUYER and if said amount exceeds the amount BUYER paid as a minimum monthly commitment, SELLER shall refund or credit to BUYER's future bill all money paid for water which was not actually consumed.

5. Modification of Contract. That the provisions of this contract pertaining to the schedule of rates to be paid by BUYER to SELLER for water delivered are subject to modification from time to time by SELLER. Any increase or decrease rates shall be based on an increase or decrease in the cost of production or capitalization of SELLER's system. In addition, SELLER shall have the right to add an additional 10% charge as a reserve for additional unforeseen expenditures and costs. Any increase or decrease in rates shall be uniform for all public agencies who are presently members of Public Wholesale Water Supply District #4 at the time of the signing of this agreement. As such, any increase or decrease in rates shall be exactly the same cents per thousand gallons for each public agency who is a member of Public Wholesale Water Supply District #4 at the time of the signing of this agreement.

6. Regulatory Agencies. That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and SELLER and BUYER will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

7. Miscellaneous. That the construction of the water supply distribution system owned by SELLER and BUYER are being financed by loans made or insured by, and/or a grant from the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the

undertakings of the SELLER and BUYER are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

8. Binding Effect of Minimum Water Usage Commitment Agreement. Parties agree that this contract in no way amends or modifies the minimum water usage commitment previously entered into between the parties and said agreement is still in full force and effect.

SELLER:

PUBLIC WHOLESale WATER SUPPLY
DISTRICT No. 4

BY: Virgil Thompson
Title: Pres.

ATTEST:

J. M. [Signature]
Secretary

BUYER:

CITY OF EDNA, KANSAS

BY: [Signature]
Title: Mayor

ATTEST:

[Signature]
Secretary

This contract is approved on behalf of the Farmers Home Administration this 7 day of December, 1983.

BY: [Signature]
Title: Chief, Community Programs