



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 102

R. Kent Pringle
Erie City Attorney
Professional Building
10 South Steuben Avenue
Chanute, Kansas 66720-0306

Re: Procedure, Civil--Limitations of Actions--Actions
Limited to Three Years

Synopsis: Where a municipal utility passes on a supplier rate increase to its customers, and subsequently receives a refund upon disallowance of the increase, any liability of the municipal utility to distribute the refund to its customers (located within the municipality) is in the nature of a quasi-contractual obligation based on the doctrine of unjust enrichment. Accordingly, any action by a customer for a refund must be brought within 3 years. K.S.A. 60-512(1). Cited herein: K.S.A. 60-512; 66-104.

* * *

Dear Mr. Pringle:

You request our opinion regarding disposition of a supplier refund received by the electric utility operated by the city of Erie. You indicate that the circumstances regarding receipt of the aforesaid refund are as follows:

"From the months beginning January, 1978, through August, 1980, an adjusted rate schedule was implemented by Kansas Gas and Electric Company which was supplier to the

municipally-operated electric utility owned by the City of Erie. On August 21, 1980, the Federal Energy Regulatory Commission on Docket No. ER 77-578 ordered Kansas Gas and Electric Company to refund to the City of Erie, Kansas, all amounts collected in excess of the rates in effect prior to January 9, 1978, plus interest. On September 19, 1980, the City of Erie received the sum of \$204,145.75 in satisfaction of that Court-ordered refund from Kansas Gas and Electric Company. Those funds presently are still in the possession of the City of Erie. The city desires to use those funds for general improvement of the city's public utility plant and distribution system."

While you do not indicate whether the supplier increase (which resulted in the refund) was passed on to municipal electric customers, you do advise that the municipal utility serves only customers located within the city limits of Erie, Kansas. Accordingly, the rules and regulations of the Kansas Corporation Commission have no application to the disposition of the subject supplier refund. K.S.A. 66-104.

There is some disagreement among authorities regarding whether customers of a public utility have any rights with respect to a fund representing a refund from another supplying utility upon reduction of the latter's rate. 18 A.L.R.2d 1343. Some courts have held that consumers are entitled to the fund based on the theory of unjust enrichment, and others have held that they have no interest in the fund since they paid no more than the rates lawfully in effect and as fixed by the rate making authorities. Id.

As noted above, you have not indicated whether the supplier rate increase was passed on to customers of the municipal utility, nor have you provided any information regarding the financial operations of the utility during the over-charge period. However, you do indicate that the supplier refund was received by the city of Erie on September 19, 1980, and that no customer has made any request or demand for a refund. In this regard, it appears that any claim against the city for a refund is barred by K.S.A. 60-512(1), which provides as follows:

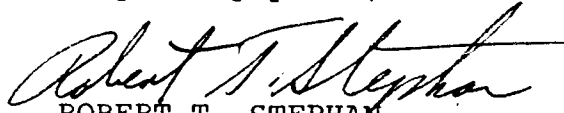
"The following actions shall be brought within three years:

"(1) All actions upon contracts, obligations or liabilities expressed or implied but not in writing."

See 60 Am.Jur.2d Restitution and Implied Contracts §154;
Boston Safe Deposit and Trust Company v. Boyd, 139 Kan.
411, 414 (1934).

In summary, it is our opinion that where a municipal utility passes on a supplier rate increase to its customers, and subsequently receives a refund upon disallowance of the increase, any liability of the municipal utility to distribute the refund to its customers (located within the municipality) is in the nature of a quasi-contractual obligation based on the doctrine of unjust enrichment. Accordingly, any action by a customer for a refund must be brought within three years. K.S.A. 60-512(1).

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:JLM:TRH:jm