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ATTORNEY GENERAL OPINION NO. 91- 101

Jim Robinson, Chairman
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027

Joe Norton
Counsel for the Kansas Municipal
Gas Agency
Gilmore & Bell
One Main Place, Suite 800
Wichita, Kansas 67202-1398

Re: Public Utilities--Powers of State Corporation
Commission; Gas Pipeline Safety--Rules and
Regulations in Conformance with Federal Pipeline
Safety Act; Application

Synopsis: K.S.A. 66-1,150 authorizes the Kansas corporation
commission (KCC) to adopt rules and regulations
in conformance with the natural gas pipeline safety
act of 1968 (49 U.S.C. 1671 et seq.)
Conformance with this act permits the KCC to
impose more stringent regulations pursuant to state
authority. The regulations promulgated apply to
all public gas utilities, including municipalities
that are otherwise outside the KCC's
jurisdiction. Cited herein: K.S.A. 66-104; K.S.A.
66-1,150.

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Dear Mr. Robinson and Mr. Norton:

You inquire whether K.S.A. 66-1,150 authorizes the Kansas corporation commission (KCC) to adopt more stringent regulations than those imposed by the natural gas pipeline safety act of 1968 (49 U.S.C.A. § 1671 et seq.) (the federal act). You also inquire as to how those requirements relate to municipal utilities.

K.S.A. 66-1,150 states:

"The state corporation commission is hereby authorized to adopt such rules and regulations as may be necessary to be in conformance with the natural gas pipeline safety act of 1968 (49 USCA 1671 et seq.). For the purpose of gas pipeline safety such rules and regulations shall be applicable to all public utilities and all municipal corporations or quasi-municipal corporations rendering gas utility service, the exemption provisions of K.S.A. 66-104, 66-131 and related statutes notwithstanding. Nothing in this section shall be construed as invalidating any present rules or regulations of the state corporation commission, concerning the regulation of pipelines and pipeline companies. (Emphasis added).

The language of K.S.A. 66-1,150 above is important because as an administrative agency, the KCC is a creature of statute whose power is dependent upon authorizing statutes. State v. Pierce, 246 Kan. 183, 189 (1990) citing Pork Motel Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374, 378 (1983); Cray v. Kennedy, 230 Kan. 663, 675 (1982). Thus in order for the KCC's rules and regulations concerning gas pipeline safety to be valid, the regulations must be authorized by K.S.A. 66-1,150. The statute authorizes the KCC to adopt such rules and regulations "as may be necessary to be in conformance with" the federal act. Thus the issue presented by your inquiry is whether this language authorizes only the adoption of regulations conforming to the minimum standards set by the federal act or whether it authorizes more stringent regulations.

The issue is one of statutory construction. The fundamental rule of statutory construction, to which all others are

subordinate, is that the purpose and intent of the legislature govern when that intent can be ascertained from the statute. State v. Adee, 241 Kan. 825 (1987), citing Harris Enterprises, Inc. v. Moore, 241 Kan. 59 (1987); Pork Motel Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374 (1983). We must thus determine what the legislature intended when it mandated the KCC "to conform" to the federal act. The term "conform" means to act or be in compliance with; to comply. American Heritage Dictionary 280 (1978).

In order to determine whether the statutory authority "to comply" with the federal act authorizes the KCC to promulgate more stringent standards we look to the federal act, at 49 U.S.C. § 1672 that states:

"(1) The Secretary shall, by regulation, establish minimum Federal safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Such standards may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Such Federal safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the Secretary shall consider --

"(A) relevant available pipeline safety data;

"(B) whether such standards are appropriate for the particular type of pipeline transportation or facility;

"(C) the reasonableness of any proposed standards; and

"(D) the extent to which such standards will contribute to public safety. Any State agency may adopt additional or more stringent safety standards for interstate pipeline transportation if such standards are compatible with the Federal minimum standards. No State agency may adopt or continue in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective." (Emphasis added).

The federal act preempts the field of interstate gas pipeline safety by imposing minimum standards on all the states. However, it allows states to impose more stringent standards for intrastate pipeline transportation. The federal act however does not and cannot provide authority for a state administrative agency to promulgate more stringent standards, only a state statute can do that. The federal act may be used by a state legislature to establish the standards to be followed and the federal standards must be adopted by the state in order for the state to step into the shoes of the United States secretary of transportation to enforce compliance with intrastate pipeline transportation safety standards. 49 U.S.C.A. App. § 1674(a)(2) (West 1991). In our judgment, the Kansas legislature has adopted the federal act as a standard for the KCC to follow or to comply with. In so doing the legislature has given the KCC the discretion to promulgate more stringent regulations.

Our conclusion is supported by applying another rule of construction that states: In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending the passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. State, ex rel., v. City of Overland Park, 215 Kan. 700 (1974). K.S.A. 66-1,150 was enacted in 1970 and amended in 1971 to include municipalities. The historical background, circumstances attending its passage and purpose of K.S.A. 66-1,150 logically stem from the federal mandate apparent in the section cited above that requires states to adopt the minimum standards set by Congress. Congress contemplated that states impose more stringent standards, thereby allowing the states the

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autonomy to consider circumstances peculiar to that state that may require more stringent regulation.

To give K.S.A. 66-1,150 any different interpretation would be to find that the legislature desired to circumvent or ignore circumstances peculiar to our state that may require more stringent safety regulations. The legislature clearly did not intend that the circumstances attendant to gas pipeline safety in our state be ignored in favor of minimum standards that may or may not suffice. It is thus more convincing to us that the legislature intended the KCC exercise its discretion in the area not otherwise preempted, the area of more stringent regulations.

The second question is whether the regulations promulgated by the KCC pursuant to K.S.A. 66-1,150 are applicable to municipalities. The statute states: "For the purpose of gas pipeline safety such rules and regulations shall be applicable to all public utilities and all municipal corporations or quasi-municipal corporations rendering gas utility service, the exemption provisions of K.S.A. 66-104, 66-131 and related statutes notwithstanding." Thus K.S.A. 66-1,150 specifically provides that it shall be applicable to all gas utilities notwithstanding the exemption provisions of K.S.A. 66-104 (that gives exclusive jurisdiction to the city where the utility is within or principally operated for the benefit of such city) and K.S.A. 66-131 (that subjects municipalities to the requirement of a permit to transact business).

In conclusion it is our opinion that K.S.A. 66-1,150 requiring the KCC to comply with the natural gas pipeline safety act of 1968 authorizes the KCC to impose more stringent regulations than those imposed by Congress. Additionally those regulations imposed by the KCC pursuant to said statute apply to all municipal gas utilities in accordance with the statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General