FILE

Subject Waters
Rural Water Districts

Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

April 10, 1974

Opinion No. 74- 113

Mr. Dean Burkhead
Attorney at Law
P.O. Box B
Lawrence, Kansas 66044

Dear Mr. Burkhead:

As counsel for Rural Water District No. 5 of Douglas County, Kansas, you advise that the district was recently organized, and proposes to enter into a contract for the purchase of water from the City of Lawrence, Kansas. The district is to be financed by longterm FHA bonds, which generally are issued with a thirty-year maturity date. In negotiating a contract for the purchase of water from the City of Lawrence, the city has questioned whether it may legally enter into a contract of this duration, the reservation based on the suggestion that it would have the effect of binding subsequent city commissioners.

I enclose a copy of my opinion dated September 10, 1973, issued to the Legal Department of the City of Overland Park. You may wish to direct the attention of the city legal counsel to City of North Newton v. Regier, 152 Kan. 434, 103 P.2d 873 (1940), which is particularly pertinent to your inquiry. The fact that the contract would be binding upon the city during the term of one or more subsequent commissioners is not, in and of itself, grounds for objection to its duration. The proposed contract in question would involve an exercise of the administrative powers of the city, and the Kansas Supreme Court has indicated that a contract of substantial duration is not for that reason invalid unless "it clearly appears that the term fixed is unreasonably long or that the officials have abused their discretion." There is no basis upon which I could justifiably

conclude, purely as a matter of law, that a contract to furnish water supplies to a rural water district for a period of thirty years is beyond the legal authority of the city.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm

FILE

Subject Health, Public Ambulances

Copy to

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State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

April 10, 1974

Opinion No. 74- 114

Clyde P. Daniel
City Attorney
P.O. Box 499
Garden City, Kansas 67846

Dear Mr. Daniel:

You advise that several years ago, in an attempt to resolve a local lack of ambulance service, the governing bodies of Finney County and Garden City entered into a contract with R. D. Ragel d/b/a Garden City Ambulance, by which each governing body provided a subsidy to Ragel of $500 per month to furnish ambulance service to the county and city. The contract set forth certain standards for performance, service and equipment.

Upon expiration of this contract, a new agreement was executed providing for a subsidy of $750 per month to be paid to Ragel commencing January 1, 1974, by each governing body. At the time this last contract was being negotiated, another group in the community indicated that it was in the process of commencing a new ambulance service; that it had been assured of a loan in a sufficient amount to provide the ambulance service required; that it could provide capable and trained personnel, and that it desired to enter into a contract with the governing bodies. Both governing bodies after separate formal action entered into the Ragel agreement. Since that time, this other group has now begun to provide ambulance service as Emergency Care, Inc., and is providing such service throughout the community.

One of your city commissioners has now questioned the legality of the present contract with Ragel, in view of the new ambulance service presently available in the community. K.S.A. 19-261 states in pertinent part thus:

> "The board of county commissioners of any county may provide as a county function or may contract with any city, person, firm, or corporation for the furnishing of ambulance services within all or any part

> of their respective counties . . . . The board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives adequate ambulance service, but the county shall reimburse any taxing district which provides ambulance services to such district with its proportionate share of the county general fund budgeted for ambulance services within the county."

In Robinson v. Board of County Commissioners of Osborne County, 210 Kan. 684, 504 P.2d 263 (1972), the court considered a number of questions relating to the authority of county commissioners to contract for ambulance service under this act. Upon expiration of a contract with Robinson, plaintiff in that case, the commissioners awarded the contract to another operator. Robinson challenged the new contract on a number of grounds, a primary ground being stated thus:

> "Simply put, plaintiff's theory is that once he commenced operations he was furnishing 'adequate ambulance service' in that part of the county he served, and so long as he met the standards contained in his contract the commissioners were forbidden by the italicized portion of the statute to provide other ambulance service." [The italicized portion is quoted supra.]

The court responded to this argument with a number of points. The most important of them was its interpretation of the statutory language thus:

> "'Adequate ambulance service' must be read to mean service provided by some agency, public or private, not being subsidized by the county."

From the facts stated in your letter, it appears that the group which sought to compete with Ragel sought not merely to provide ambulance service, but to succeed Regal as an operator enjoying subsidies furnished by the city and county. Moreover, at the time the contract commencing January 1, 1974, was in the process of negotiating, that group represented only that it was in the process of commencing a new ambulance service. Subsequent to execution of the Ragel contract, signatures thereon being dated September 11 and 26, and October 1, 1973, the new group began operation as Emergency Care, Inc.

So far as we can determine, there was not in existence on those dates any alternative ambulance service, to which the commissioners could look to determine whether it could or should enter

into the Ragel contract. At that time, the commissioners could be assured of continued ambulance service in the county only by renewing the contract with Ragel. If there was in existence an independent operator furnishing ambulance service to the city, or any other part of the county, the county commissioners would not be lawfully entitled to contract for ambulance service to the city or that other portion of the county which was in fact receiving such service. However, in our view, it is no objection to the validity of the Ragel contract that another operator stood ready to provide similar service under contract with the county under the same terms, i.e., upon payment of a subsidy, as those under which Ragel entered into the contract.

So far as appears to us, the contract with Ragel was fully within the authority of the Finney County Board of County Commissioners and the City of Garden City, and we find no ground upon the facts stated above for questioning its validity.

If, however, you should have further questions concerning this matter, please do not hesitate to contact us.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm