

FILE

Subject

City
Water Extensions

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

April 26, 1974

Opinion No. 74- 130

James R. Ward
Assistant City Attorney
Municipal Building
215 East 7th Street
Topeka, Kansas 66603

Dear Mr. Ward:

You inquire concerning the propriety of certain services furnished and expenditures incurred by the Topeka Water Department for which no reimbursement is received.

You properly question such practices under ch. 13, art. 24, K.S.A., governing operation of the water department in question here. K.S.A. 13-2405 governs the fixing of water rates:

"Said . . . commissioners shall fix such rates for water furnished to consumers as will secure an income sufficient to pay all salaries and wages of all officers and employees in such department; to cover all miscellaneous expenses; to pay all interest charges upon all indebtedness of the city created for the purpose of purchasing, improving or extending the waterworks, and to provide a sinking fund of not less than two percent per annum upon such gross indebtedness for the purpose of paying off such indebtedness at maturity; to cover the cost of all repairs, renewals, betterments and extensions of the waterworks and all material used; to cover the depreciation of the plant by use and by improvement in the arts; to repair all losses of the waterworks caused by accident of every kind and to recoup the city for loss of taxes due to city ownership."

The statute does not authorize rates the sufficiency of which is to be measured by liabilities and expenses other than those enumerated by law.

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The use of these revenues is fixed by K.S.A. 13-2408:

"All revenues derived from the sale and consumption of water and from the management and operations of waterworks shall . . . be kept in a separate fund, to be known as the waterworks department fund; and such revenues shall be used exclusively for the operation, maintenance, renewal and extension of the waterworks and in paying off the bonded indebtedness created for the purchase price or interest charges on such indebtedness and for no other purpose . . ."

* * *

"Any member of the board of commissioners who shall vote for, or aid, in the transfer or use of such revenues for any private purpose or for any other department of the city government, except as herein provided, shall forfeit his office and be liable on his official bond for such misappropriation." [Emphasis supplied.]

Lastly, of particular pertinence here, K.S.A. 13-2412 states thus:

"No person, firm, corporation, or association, nor any city department, shall be allowed free use of water, nor shall there be discrimination among water users of like classes as to rates, and rebates in rates shall never be allowed to any person, firm or corporation or city department except as an inducement to prompt payment of water rates." [Emphasis supplied.]

We agree with you that the furnishing of water by the city water department to other departments without charge therefor is absolutely prohibited by law, and that the city water department must be paid in full for all water delivered or furnished to any person, firm, corporation, association, municipal corporation, including the City of Topeka, or any department thereof. Similarly, the water department is not authorized to furnish services without cost to any person, firm, corporation, and the like, including other departments of the city. Funds may be expended, of course, to discharge the responsibility of the department to "keep in good repair the pumps, hydrants, and all other waterworks property." However, the department is not authorized to furnish personnel, materials, or services without cost for the performance of the duties and responsibilities of any other municipal department.

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As recapitulated, we share the opinions expressed in your letter.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Vern Miller".

VERN MILLER
Attorney General

VM:JRM:jsm