



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

February 7, 1977

ATTORNEY GENERAL OPINION NO. 77- 44

The Honorable Norman E. Gaar
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Cities--Home Rule--Utilities

Synopsis: Senate Bill 79, before the 1977 legislature, is unnecessary to empower a Kansas city to construct a line for the purchase of electricity to a seller thereof located beyond the territorial boundaries of the city, for the city may do so in the exercise of its general administrative powers vested in it by Article 12, § 5 of the Kansas Constitution.

* * *

Dear Senator Gaar:

You inquire concerning 1977 Senate Bill 79, which has been proposed to amend K.S.A. 12-821. In pertinent part, that section now provides thus:

"Subject to the provisions of K.S.A. 66-104 and 66-131, and amendments thereto, any city operating any waterworks, fuel, power or lighting plant or sewer system may extend its mains, transmission lines or pipe lines within or without the city by construction or purchase, when applications have been made and agreements entered into along the proposed extension that will produce a revenue in the judgment of the governing

The Honorable Norman E. Gaar
Page Two
February 7, 1977

body, sufficient to pay interest on the cost of the extension, and the operating cost of the product or service furnished."

The bill would add the following paragraph to the foregoing:

"Any city having a population of seventeen hundred (1700) or less which operates an electric utility system and which is located in a county which adjoins the boundary of any state adjacent to the state of Kansas may extend its electric transmission lines, by construction or purchase, without this state and it shall not be necessary for such city to enter into agreements with persons along the proposed extension to produce revenue sufficient to pay interest on the cost of such extension and the operating cost of the electrical service furnished thereby if the governing body of such city shall by resolution declare that such extension is necessary and desirable and is in the best interests of such city."

You inquire whether a city operating an electric utility system under the authority of ch. 12, K.S.A. has authority under either existing statutory or constitutional provisions to extend lines as described above.

With your letter, you enclose some background of this bill. The City of Kiowa has purchased an electrical distribution system, and entered into a contract with an Oklahoma-based electric cooperative for the purchase of electricity. As a part of the agreement, the cooperative has agreed to construct a transmission line from its substation in Oklahoma to the City of Kiowa, a distance of about 8 miles, and the city has agreed to pay the costs of this line.


The existing K.S.A. 12-821 contemplates extensions of lines which are supported by use of the service "along the proposed extension. . . ." The line in question is not designed and will not be used to serve new and additional customers, and thus appears not to fall within the cited statute.

The Honorable Norman E. Gaar
Page Three
February 7, 1977

At 6 McQuillen, Municipal Corporations, § 24.57, the writer states thus:

"As a general rule municipal police power and ordinances operate only within the municipal area, and the police power of a municipal corporation cannot be exercised outside its boundaries without special authorization. But in the interests of police and fire protection and the preservation of the public health, laws may and sometimes do provide that all ordinances of specified cities enacted for these purposes shall apply to the territory outside of the city limits within a specified distance. . . ."

See also Humphrey v. Franklin, 40 Kan. 410, 19 P. 801 (1888). Here, however, we are not dealing with an extraterritorial exercise of the police power, but the construction of a line for the transmission of electricity for the operation of a municipal utility. The matter is entirely a local one, and absent any claim of extra-territorial application of the municipal police power, in my judgment, the construction of the line is within the compass of the general administrative power which is vested in the city under Article 12, § 5 of the Kansas Constitution.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj