



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

September 19, 1977

ATTORNEY GENERAL OPINION NO. 77-304

Mr. Wilbur S. Stakes, Jr.
City Attorney
Holiday Plaza
Lansing, Kansas 66043

Re: Townships--Water System--Disposal

Synopsis: There is no statutory authority for the proposed conveyance by Delaware Township, Leavenworth County of the township water distribution to the City of Lansing, Kansas.

* * *

Dear Mr. Stakes:

You have submitted for our review a proposed agreement between Delaware Township, Leavenworth County, and the City of Lansing, Kansas, providing for conveyance of the township water department to the city.

Article I of the proposed agreement describes the subject of the conveyance thus:

"The acquisition by the City of the Township Water Distribution System will comprise in general the conveyance by the Township to the City of substantially all of the assets of the Township Water Distribution System and certain assets of the Delaware Township Water Department; the assumption by the City of particular liabilities of the Township Water Distribution System and of the Delaware Township Water Department"

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Under Article II, section 1, the parties agree that the township will convey to the city "all of the Delaware Township Water Department and Township Water Distribution System business properties, and assets of every kind and description, real and personal. . . ." Section 3 of this article implies the effect of the acquisition thus:

"On the effective date of the acquisition as hereinafter specified, the City shall possess . . . any and all Delaware Township Water Department and Township Water Distribution System property, real, personal, mixed and intangible, and all other assets of the Delaware Township Water Department and Township Water Distribution System as reflected in Exhibit B attached hereto; any and all accounts receivable; any and all other choses [sic] in action and all and every other interest of or belonging to or due to the Delaware Township Water Department and the Township Water Distribution System shall be deemed to be transferred to and vested in the City."

The foremost question is that of the authority of the township, if any, to convey to the city its water system. K.S.A. 80-112 is proposed as constituting such authority. It provides in pertinent part thus:

"Any township owning real property which is located in a city of the first, second or third class, is hereby authorized without a vote of the people, to dispose of such property"

Clearly, the agreement proposes to convey more than the real property of the township which is located within the City of Lansing. The "township water distribution system" consists, according to a prefatory recital in the agreement, of "water mains, water meters, valves, fire hydrants, pumps, reservoir, and any and all related matters pertaining thereto." Certainly, the reservoir, pumping stations, mains and the like may constitute real property, and if located within the corporate city limits, may arguably be

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conveyed under this provision. I understand that approximately ten per cent of the township subscribers reside outside of the city limits, and I assume that some portion of the township water mains extends beyond the Lansing corporate limits.

In addition, however, the agreement is not limited merely to real property which is located within the city, but includes "all Delaware Township Water Department and Township Water Distribution System property, real, personal, mixed and intangible, and all other assets" of the township water department and distribution system, including accounts receivable and choses in action as recited in exhibits or schedules to be attached to and incorporated in the agreement.

In *Township Board of Ash Creek Township v. Robb*, 166 Kan. 138, 199 P.2d 521 (1948), the court stated in its syllabus that "[t]ownships have only such powers as are conferred upon them by statute." I can find no statutory authority for the township to convey away and thus dispose of its water distribution system. Under K.S.A. 80-1601 *et seq.*, certain townships, presumably including Delaware, are authorized to acquire and construct a water system, including mains and water treatment plant, to provide a water supply, to issue waterworks revenue bonds, and levy fees and charges for service to provide for the operation and maintenance of the water system. Nothing in article 16, ch. 80, K.S.A. empowers the township to dispose of the system, however. Clearly, the proposed agreement contemplates that the township water system shall be conveyed in its entirety, that this is not a conveyance merely of realty or of personalty, but of an operating township water utility, including its accounts receivable, choses in action, and each and every kind of property interest, real, personal, mixed and intangible, which appertains to the utility operation. Clearly the subject of the conveyance is not merely real property, and it thus far exceeds the limited authority of the township under K.S.A. 80-112. I can find no statute, indeed, which authorizes this proposed conveyance, either expressly or impliedly, with or without a vote of the electors of the township. In my judgment, the township must seek legislative enactment of statutory authority for the proposed disposal and conveyance of the township water utility. Accordingly, I cannot approve the proposed agreement as within the authority of the township board.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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cc: Mr. Michael Crow
Board Attorney
Delaware Township Waterworks Department
Lansing, Kansas 66043

Mr. Ed Nichols
Dean and Nichols
Suite 181
Townshite Plaza II
Topeka, Kansas 66603