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ATTORNEY GENERAL OPINION NO. 80- 21

The Honorable Michael Pfannestiel
Mayor
Attica, Kansas 67009

Kenneth Rogers
City Council President
Attica, Kansas 67009

Re: Third Class Cities--Drilling of Natural Gas Wells

Synopsis: A third-class city may, pursuant to K.S.A. 15-1117 et seq., contract with an individual for the drilling of natural gas wells whereby the wells become the property of the city and the individual is "fully reimbursed" from any proceeds therefrom. As used in K.S.A. 15-1118, this latter term does include the allowance of all costs incurred in the undertaking. Furthermore, actions taken under K.S.A. 15-1118 are subject to the provisions of K.S.A. 15-1121 and 15-1122 (dealing with a resolution and election required to initiate action) in the same way as are those initiated under K.S.A. 15-1120.

* * *

Dear Sirs:

You have requested the opinion of this office regarding the construction to be given several statutes contained in K.S.A. 15-1117 et seq., which relate to the acquisition of natural gas wells by third-class cities. Attica is such a city, and we understand it is interested in utilizing the provisions of this act to exploit possible gas reserves which may lie within the city limits. You have also indicated that two private wells have already been drilled in the same area, but just outside the city limits.

Your first inquiry concerns the interpretation to be given to a phrase used in K.S.A. 15-1118, namely, does the term "fully reimbursed" include an element of reasonable profit? An examination of the statutes indicates that while K.S.A. 15-1117 grants a third-class city powers to drill for, produce and sell natural gas, it is the succeeding section which specifies how the initial phase of the operation (*i.e.*, drilling) is to be carried out. In pertinent part, 15-1118 states:

> "The drilling of a well as authorized in this act shall be upon the further conditions that some person shall be willing to enter into an agreement with the city whereby such person will drill and equip the well at such person's own expense, in the first instance, and without cost to the city, and with the understanding that such person shall be repaid from the natural gas produced from said well or the proceeds thereof, and that after being *fully reimbursed* the city shall then become the sole and exclusive owner of the well. (Emphasis added.)

As you note in the memorandum attached to your request, the language contained in this statute is quite explicit upon the point that a city may not drill or equip a well itself. Rather, it must contract with a person to do the work at his own expense, and then "fully reimburse" such person *from the proceeds* of the well. We note that if no gas is produced, the statute would appear to contemplate that no payment of any amount be forthcoming and, as you note, if the statute is to be additionally interpreted so that an individual is reimbursed only for the costs of his materials, economic realties would make this statute a dead letter. Having the power to do an act is worthless if the power cannot be exercised.

In our opinion such a result is not warranted by either the language of the statute or case law authority. We first note that the legislature, in enacting K.S.A. 15-1118, could have used the term "cost" consistently throughout. It did not, however, for while the language used does state that the well shall be drilled at no cost to the city, it does not state that the driller is to be fully reimbursed for the costs of his materials only. In the absence of any indication to the contrary, we are not prepared to conclude that the legislature meant to have private drillers do the work essentially for free by refusing to allow them reasonable allowances for wages, overhead, debt service, and so forth. Given the practical impossibility of work being done under such conditions, this interpretation would reduce the statute to a nullity, a result which should, if possible, be avoided.

There exists authority to support such a result. In County of Los Angeles v. Frisbie, 19 Cal.2d 634, 122 P.2d 526 (1942), the term "reimbursement" was defined to include "to pay back, to make restoration, to repay that expended." Additionally, the term "full" is defined as meaning "complete" or "entire," Black's Law Dictionary, 5th ed. (1979), p. 605. Accordingly, in view of these definitions, as well as the plain meaning of the statute, it is our opinion that only reimbursement which includes an allowance for all costs normally incurred in daily business would "completely repay" such person "for that which he expended" in drilling a gas well for the city.

Your second inquiry concerns whether K.S.A. 15-1121 and 15-1122 apply equally to 15-1118 and 15-1120, or merely the latter. The former statutes deal with the procedures which a city must employ prior to commencing gas wells, which include a resolution by the governing body, an election in which an affirmative vote of at least 65% is received, and grievance procedures for landowners who want to either exempt their property from the "drilling unit" fixed by the resolution or be compensated therefor. K.S.A. 15-1118, as noted above, deals with the contracting by a city of an individual to drill for it, while 15-1120 allows a city to drill wells jointly with private individuals. One difference between the two is the fact that under 15-1120 each party contributes a proportionate share of the expenses, and receives in turn a proportionate share of the profits. Additionally, while 15-1118 deals with a well on land owned or leased by the city, 15-1120 appears to involve a type of unitization of land, regardless of whether it is within the city limits or even owned by the city.

However, the difference between the two statutes appears to rest solely on whether a city has sufficient land within its corporate limits, i.e., 640 acres, to proceed with a well on its own. See K.S.A. 15-1119. If not, then the "unitization" procedures under K.S.A. 15-1120 must be employed to assemble sufficient land to constitute a "drilling unit." As the city is thereby forced to contract with private persons, it is only reasonable that such persons be allowed to share proportionately in the proceeds, as well as to bear a proportionate share of the costs. This procedure in no way alters the requirements of K.S.A. 15-1118 concerning the drilling of a well, but merely provides a workable option for smaller towns to meet general requirements concerning the size of acreage needed to drill a natural gas well. In both cases gas may be removed from underneath land owned by city residents, and it is necessary to obtain their consent for such action through the election contemplated by K.S.A. 15-1121.

Further indication that the election procedures of K.S.A. 15-1121 apply in both the case of 15-1118 and 15-1120 is found in the wording of the former statute, wherein it is provided:

> "Any city proposing to take action as herein authorized shall by resolution and order of the governing body of the city set out the terms and conditions which will govern the drilling of such well, the names and addresses of such persons, firms or corporations (if any) as will be associated with the city in such enterprise, a description of all of the lands constituting the drilling unit, the precise location of the proposed gas well, and shall fix the time when an election will be held for the purpose of voting on the proposal, and said resolution and order shall be published as a part of the notice of said election." (Emphasis added.)

The use of the underscored term above would be superfluous if only the procedure of K.S.A. 15-1120 was being referred to, for in that case there must be at least one other person, firm or corporation associated with the city in the assembling of the drilling unit. Such is not the case under K.S.A. 15-1118, where the city acts alone, hiring only "some person" to drill the well for it. While this person may be compensated in money or in kind, he has no share in the income which may be produced from the well thereafter. It is always to be presumed that the Legislature does not commit "useless and senseless" acts, *i.e.*, it does not enact laws which have no meaning or purpose. *Herd v. Chambers*, 158 Kan. 614 (1944).

It is accordingly our conclusion that, when the overall intent of these statutes is considered, actions taken under K.S.A. 15-1118 are subject to the provisions of K.S.A. 15-1121 and 15-1122 in the same way as are those initiated under K.S.A. 15-1120.

Very truly yours,

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RTS:BJS:JSS:gk