



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 29, 1980

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 215

The Honorable Marvin L. Littlejohn  
State Representative, 119th District  
14 Southwest Second  
Phillipsburg, Kansas 67661

Re: Cities and Municipalities--Ordinances--Cities'  
Power of Home Rule; Liability of Property Owner  
for Unpaid Water Bills

Synopsis: A city in Kansas may use its home rule power to enact  
an ordinance creating a lien on property for unpaid  
water bills, even when such bills are incurred  
in the home of a tenant and not the owner. Cited  
herein: Kan. Const., Art. 12, §5.

\* \* \*

Dear Representative Littlejohn:

You have requested our opinion on Phillipsburg City Ordinance  
No. 1037, which concerns the collection of unpaid water bills  
from the owner of any property within the city where such charges  
have been incurred. The part of the ordinance in question states  
as follows:

"18-310. PROPERTY OWNER RESPONSIBLE. The  
property owner shall be responsible for all  
water usage on said property, whether he is  
occupying the same or not. All unpaid utility  
charges shall become a lien against the property  
if allowed to go uncollected."

The Honorable Marvin L. Littlejohn

Page Two

September 29, 1980

The general rule as to ordinances of this type is stated at 64 Am.Jr.2d, Public Utilities, §60:

"In the absence of a lien authorized by statute or special agreement, a public utility cannot impose liability for utility charges incurred upon one other than the user or one who contracted for the supply, and this limitation applies with equal force to the regulations of a public service company and the ordinances of a municipal corporation. In the absence of statute there is no unconditional personal liability imposed upon owners of real estate for water rents or water rates while the property is in the possession of their tenants."

We are unable to find any such enabling statute in Kansas statutes, nor are we able to find any statutes which speak to this matter. Despite this, however, it is our opinion that Kansas does not follow the general rule in this matter because of Article 12, §5 of the Kansas Constitution, which is popularly known as the city home rule amendment. A city's home rule power, which is to be construed liberally, enables it to determine its local affairs and to enact ordinances even when not specifically empowered to do so by state statute. This power is restricted only in certain prescribed cases, one of which occurs when the legislature has enacted a law uniformly applicable to all cities which regulates the subject area or which expressly preempts the field. Insofar as the legislature has not spoken on the question before us, there is no uniformly applicable legislation, leaving a city like Phillipsburg free to enact ordinances such as No. 1037. This office has previously reached the same conclusion in similar cases involving the liability of property owners for water used by occupants of the property. Attorney General Opinion Nos. 74-57 and 79-80 are attached.

We likewise do not find any legal objection with the Phillipsburg ordinance from a due process standpoint. The general rule is stated at 64 Am.Jur.2d, Public Utilities, §61:

"The statutory imposition upon property of a lien for charges for a utility supplied to a user other than the owner has been held not to deprive the owner of due process of law. . . ."

While no Kansas cases have been reported which are precisely on this point, it is clear that, once notice and a hearing are provided, due

The Honorable Marvin L. Littlejohn  
Page Three  
September 29, 1980

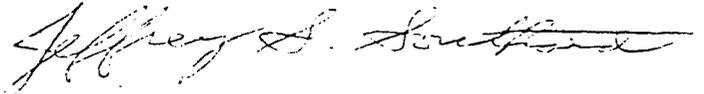
process is not violated by a city's cutting off of utilities in this manner. See, City of Lawrence v. Robb, 175 Kan. 495, 509 (1954), and Donnelly v. City of Eurkea, Kansas, 399 F.Supp. 64 (D.Kan. 1975). Here we note such notice and an opportunity for hearing were provided.

To summarize, a city in Kansas may use its home rule power to enact an ordinance creating a lien on property for unpaid water bills, even when such bills are incurred in the name of a tenant and not the owner.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJJ:JSS:phf  
Enclosures