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February 26, 1981

ATTORNEY GENERAL OPINION NO. 81- 52

William B. Elliott
City Attorney
City of Hill City
205 North Pomeroy
Hill City, Kansas 67642

RE: Laws, Journals and Public Information -- Records
Open to Public -- Municipally-owned Utilities

SYNOPSIS: Records of a municipally-owned utility maintained
in the normal course of the business of operating
such utility are "official public records" within
the meaning of K.S.A. 1980 Supp. 45-201, which
governs disclosure of public records. Thus, the
City of Hill City is required to make all of its
utility records open for personal inspection by
any citizen. Cited herein: K.S.A. 1980 Supp.
10-1208, K.S.A. 12-120, 12-834, K.S.A. 1980 Supp.
45-201, 75-1117, 75-1120, 75-1120a, 75-1122.

* * *

Dear Mr. Elliott:

You have requested an opinion from this office as to whether
the utility records maintained by the City of Hill City,
which owns the municipal electric and water plant, are public
records which must be made available for public inspection.
The requirements for disclosure of public records are pre-
scribed by K.S.A. 1980 Supp. 45-201, which provides in perti-
nent part as follows:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." (Emphasis added.)

As specified in the underscored language above, there must be a law requiring records to be "kept and maintained" for them to become "official public records." This interpretation was applied in Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919 (1974), where the Kansas Supreme Court concluded the foregoing statute applies "only to public records which are required by law to be kept and maintained." (Emphasis added.)

Provisions of the statutes pertaining to the municipal accounting board (K.S.A. 75-1117, et seq., and amendments thereto) define "municipality" at K.S.A. 1980 Supp. 75-1117 to include any "municipally-owned or operated utility" which is "entitled to receive and hold public moneys pursuant to any provisions of state law authorizing such public or quasi-public corporation to collect or receive such public moneys."

The municipal accounting board statutes specify the system of fiscal procedure required of municipalities defined thereunder. K.S.A. 1980 Supp. 75-1120 provides:

"There is hereby authorized and there shall be a system of fiscal procedure, accounting and reporting for all municipalities of the state of Kansas required by K.S.A. 1978 Supp. 75-1122, to have their accounts examined and audited at least once each year, which system shall be uniform in its application to all officers of the same grade and kind and all accounts of the same kind of municipalities to which it is applicable, and shall be used by such municipalities and their officers and employees when directed by the state municipal accounting board."

The accounting principles to be utilized are established by K.S.A. 1980 Supp. 75-1120a, which states:

"(a) Except as hereinafter otherwise provided, the governing body of each municipality, as defined in K.S.A. 1979 Supp. 75-1117, shall utilize accounting procedures and fiscal procedures in the preparation of financial statements and financial reports that conform to generally accepted accounting principles as promulgated by the national committee on governmental accounting and the American institute of certified public accountants and adopted by rules and regulations of the municipal accounting board."

The only exceptions to the foregoing are contained in subsections (b) and (c), which provide for an "exemption" and a "waiver," respectively, for certain fixed asset records. Neither subsection has any bearing or applicability as far as an individual's monthly utility billing record is concerned, even if the municipality should qualify for one or the other.

The generally accepted accounting principles promulgated by the National Committee on Governmental Accounting referred to above in 75-1120a are set forth in the publication Governmental Accounting, Auditing, and Financial Reporting (Eleventh Printing, 1968), which provides in pertinent part:

"The accounting for all enterprise funds of government, like that for private, profit-making business, should be on an accrual basis. This means that revenues from enterprise operations are to be recorded in the books of account when earned and expenses recorded when liabilities are created. . . . The principal sources of revenues of a utility or other enterprise fund are sales of services to customers. As customers are billed, Accounts Receivable is debited and the accounts for the various revenue sources are credited. Similarly, as expenses are incurred, they are charged to the appropriate expense accounts, and a liability or cash account is credited." Id. at 52, 53.

Enterprise funds are funds established to account for the financing of self-supporting activities of governmental units which "render services on a user charge basis to the general public." Id. at 50. The most common type of government enterprise is the public utility.

Annual audits are required of certain municipalities falling within one of the guidelines established by K.S.A. 1980 Supp. 75-1122, as follows:

"[T]he governing body of every unified school district and the governing body of all other municipalities either having aggregate annual gross receipts in excess of two hundred seventy-five thousand dollars (\$275,000) or which has general obligation or revenue bonds outstanding in excess of two hundred seventy-five thousand dollars (\$275,000) shall have the accounts of such municipality . . . examined and audited by a licensed municipal public accountant or accountants, or certified public accountant or accountants."

Records of the municipal accounting board reflect that the City of Hill City has annual gross receipts, as well as revenue bonds, which in each instance far exceed the minimum guidelines stated in the above-quoted provisions of 75-1122. Consequently, it is incumbent upon the municipality, including the municipally-owned utilities therein, to utilize the fiscal procedures and accounting principles mandated by the foregoing statutes.

The accounting process is detailed in Chapter Three of H. Simons and W. Karrenbrock, Intermediate Accounting (4th ed. 1964), which describes the general bookkeeping process utilized by businesses. Such description indicates that bookkeeping records consist of the original documents evidencing the transactions, called business papers or vouchers; the media for classifying and recording transactions, known as journals; the media for summarizing the effects of transactions upon the various accounts, known as ledgers; and the final result of the accounting process, known as financial statements. Id. at 63, 64. These documents are to be kept and maintained as part of the accounting process to be followed by municipally-owned utilities which are audited by the Municipal Accounting Board.

The auditor's general approach of working backward through the accounting process from financial statements to business papers is described in H. Stettler, Auditing Principles (2nd ed. 1961), at 112-114. From the financial statement, the auditor retraces the steps taken by the business until reaching a point where satisfied with the evidence being examined. In the verification of cash balances, the auditor can refer directly to cash on hand; however, in some instances the balance of an account may be verified more readily through an examination of the transactions affecting the account. In the latter situation, the auditor creates a chain of evidence linking the financial statement figures and the basic documents

evidencing the transactions that have occurred. Copies of customers' utility bills would constitute such basic documents or business papers.

Further support for the proposition that utility bills are required to be kept and maintained by municipally-owned utilities may be found at K.S.A. 12-120. This statute, which addresses the destruction policy for certain records, provides:

"The officials, officers, and employees of any city charged with the custody or having in their custody the following records, documents, or other papers may destroy the same after they have been on file for the period stated:

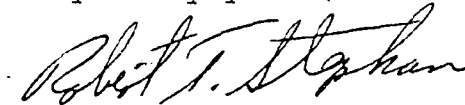
. . . .

"(4) Duplicates of utility bills sent to customers, five (5) years."

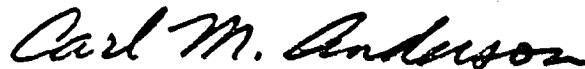
Although the above statute does not specifically state that utility bills shall be retained by a municipality, the implication from a plain reading of the language therein allows no other interpretation. Thus, it is abundantly clear that utility records maintained by such a municipally-owned utility are "official public records" which "by law are required to be kept and maintained" in accordance with K.S.A. 1980 Supp. 45-201.

Specifically, you have inquired regarding "individual monthly utility billings." To the extent such billings are essential to ascertain charges and revenues of the utility, those billings are necessarily required under general accounting principles. Absent such records it would be impossible to properly audit the municipality. It is, therefore, our opinion that information concerning customers' individual monthly utility billings maintained by the City of Hill City are "official public records" which shall be open for personal inspection by any citizen at all times.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Carl M. Anderson
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