



STATE OF KANSAS

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April 27, 1981

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ATTORNEY GENERAL OPINION NO. 81-100

William B. Elliott
Jones, Weller and Elliott
105 East Cherry
Hill City, Kansas 67642

Re: Cities and Municipalities -- Public Utilities --
Termination of Water Service for Non-Payment of
Bills ~

Synopsis: A city in Kansas may use its home rule power to enact an ordinance which provides for the termination of water service as a consequence of non-payment of charges previously incurred for such service. However, when a municipality is the sole source of water service, this service becomes a constitutionally protected entitlement, and the termination of such service must be accompanied by due process procedures. Cited herein: Kan. Const., Art. 12, §5.

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Dear Mr. Elliott:

As City Attorney for Hill City, Kansas, you have requested our opinion concerning a problem relating to the city's municipal water system. Specifically, you inform us that delinquencies in the payment of water bills are becoming more frequent. As one possible solution, you wish to know whether Hill City may legally terminate water service to customers for such non-payment.

The power of a city to terminate services for utility users who become delinquent in their bills is generally recognized.

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64 Am.Jur.2d Public Utilities, §62, 12 McQuillin, Municipal Corporations, §35.35d, 3rd ed. (1971). These general authorities approve of the exercise of such power by a city pursuant to state statute, and it has been held by courts in Kansas that a city may adopt ordinances which so provide. Cooper v. City of Goodman, 80 Kan. 121 (1909), City of Lawrence v. Robb, 175 Kan. 495 (1954).

At the present time, however, the existence of an enabling statute is unnecessary, due to Article 12, Section 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 a city to determine its local affairs and to enact ordinances even when not specifically empowered to do so by state statute. Clafin v. Walsh, 212 Kan. 1 (1973). This power is restricted only in certain prescribed cases, i.e. when the legislature has enacted a law uniformly applicable to all cities which regulates the subject area [City of Junction City v. Griffin, 227 Kan. 332 (1980)] or which expressly preempts the field. [Uhl v. City of Ness City, 590 F.2d 839 (10th Cir. 1979)]. Insofar as the legislature has not spoken on the question before us, there is no uniformly applicable legislation, leaving Hill City free to act.

We likewise do not see that there are any insurmountable due process problems created by such an ordinance. It is clear that notice and hearing procedures must be established and followed, for the termination of a municipally-provided service of this type becomes, in the absence of any private water source, the removal of an entitlement which is constitutionally protected. Donnelly v. City of Eureka, 399 F. Supp. 64 (D. Kan. 1975). This office has previously advised cities that such due process guarantees are afforded if a notice of the delinquency is provided to the customer, together with the information that he may request a hearing within a fixed number of days with the city council or an officer designated by it, and that failure to do so may result in the termination of his water service. Letter of April 17, 1978 to J. Shaffer, letter of August 8, 1978 to E. Wiles. There appears to be no reason why the same could not be done in this case.

In conclusion, a city in Kansas may use its home rule power to enact an ordinance which provides for the termination of water service as a consequence of non-payment of charges pre-

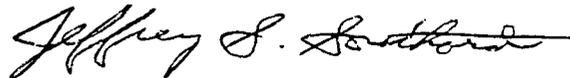
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viously incurred for such service. However, when a municipality is the sole source of water service, this service becomes a constitutionally protected entitlement, and the termination of such service must be accompanied by due process procedures.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle