



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 48

Robert D. Beall
City Attorney
403 North Fourth Street
P.O. Box 369
Leavenworth, Kansas 66048

Re: Cities, First Class--Waterworks Department--
Waterworks Board In Cities Having Military
Reservation Adjacent Thereto

Synopsis: There is no legal basis for the city of Leavenworth to operate a waterworks department, or elect a waterworks board, under the provisions of K.S.A. 13-2414 to 13-2428. The city may operate its water department under K.S.A. 13-2401 to 13-2412, or exercise its power of home rule to provide substitute and additional provisions relating to the operation of a waterworks department. Cited herein: K.S.A. 13-2401, 13-2412, 13-2414, 13-2428; Kan. Const., Art. 12, §5.

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Dear Mr. Beall:

You request our opinion concerning the operation of the water department of the city of Leavenworth. You state that said water department has operated for the last fifty years, under the provisions of K.S.A. 13-2414 to 13-2428, which statutes are part of a 1937 act which applies only to "cities having a population of more than 15,000 and which have a United States military reservation adjacent thereto." See K.S.A. 13-2414. You further

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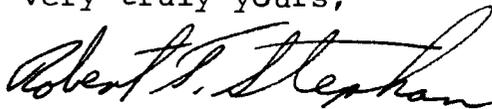
state that the city of Leavenworth is still a first class city with a population in excess of 15,000, but that the Fort Leavenworth Military Reservation which was adjacent to the city was annexed and is now the within the corporate limits of the city. [See United States v. City of Leavenworth, Kan., 443 F.Supp. 274 (1977).] Therefore, you ask whether the city may continue to elect a waterworks board and operate a waterworks department under the 1937 act, and, if not, pursuant to what statutory authority should the water department be operating.

It requires no extensive legal analysis or citation of authority to conclude that the 1937 act is no longer applicable to the city of Leavenworth, for the reason that the city no longer has a United States Military Reservation "adjacent thereto." The Fort Leavenworth Military Reservation has been annexed to and "incorporated within" the corporate limits of the city of Leavenworth. Accordingly, there is no legal basis for the city of Leavenworth to operate a waterworks department under the 1937 act, or for the city to continue to elect a waterworks board thereunder.

Regarding the city's statutory authority to operate a water department under provisions other than the 1937 act, we would direct your attention to K.S.A. 13-2401 to 13-2412. Said statutes, which are applicable to cities of the first class with the commission form of government, provide for the operation of a waterworks department under the control of the city's board of commissioners. You state that the city of Leavenworth has not exempted itself from the provisions of K.S.A. 13-2401 to 13-2412, and, in the absence of a charter ordinance so providing, it is our opinion that the city of Leavenworth may operate a waterworks department pursuant to said statutory authority.

Although what has been said above answers the questions you have posed, it is appropriate to point out there is no uniformly applicable legislation relating to the operation of a waterworks department by a municipality. Therefore, under Article 12, Section 5 of the Kansas Constitution, which is popularly known as the city "home rule" amendment, the city of Leavenworth is free to "charter out" from the provisions of K.S.A. 13-2401 to 13-2412, and provide for substitute and additional provisions relating to the operation of a waterworks department in the city. In this manner, the city could provide for the operation of a waterworks department in a manner which best fits its particular needs.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General