



STATE OF KANSAS

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May 24, 1982

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ATTORNEY GENERAL OPINION NO. 82-108

Robert Osborn
City Attorney
Stockton, Kansas 67669

Re: Cities of the Third Class--Public Utilities--
Disposition of Proceeds from Sale of Municipal
Utility

Oil and Gas--Lease of Lands by Municipal Cor-
porations--Exercise of Home Rule Power

Synopsis: A city of the third class may, pursuant to its constitutional home rule powers, exempt itself, by charter ordinance, from that portion of K.S.A. 15-809 which requires that the excess proceeds from the sale of a city-owned utility be paid into the city's general fund.

The provisions of K.S.A. 55-211a are uniformly applicable to all cities, and a city may not exempt itself from that portion of the statute which prescribes that moneys arising from the lease of lands for drilling for oil or gas, or from the production of oil or gas, shall become a part of the city's general fund. Cited herein: K.S.A. 15-809, 55-211a, Kan. Const., Art. 12, §5.

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Dear Mr. Osborn:

You request our opinion as to whether the city of Stockton, pursuant to its home rule powers, may exempt itself by charter

Robert Osborn
Page Two

ordinance from that portion of K.S.A. 15-809 which requires that the excess proceeds from the sale of an electric light plant owned by a city of the third class be "paid into" the city's general fund. Additionally, you ask whether the city may exempt itself from that portion of K.S.A. 55-211a which provides that moneys arising from the production of oil or gas on land controlled by a municipality "shall become a part of the general fund of any such municipality."

Article 12, Section 5(c) of the Kansas Constitution authorizes the adoption of charter ordinances by any city. However, pursuant to said constitutional provision, a city may not exempt itself (by charter ordinance) from an enactment which is "applicable uniformly to all cities." It is, therefore, necessary to consider whether the statutes in question are uniform or non-uniform in application.

K.S.A. 15-809 prescribes a procedure for the sale of an electric light plant owned by a city of the third class, and provides that

"All sales shall be for cash, and the proceeds of such sale shall be applied upon the payment of any outstanding bonds or obligations incurred in the purchase, erection or improvement of the aforesaid utility properties, and the excess, if any, shall be paid into the general fund of such city." (Emphasis added.)

You indicate that the city of Stockton, which is a city of the third class, will use the proceeds of the contemplated sale of its electric light plant to retire all outstanding bonds incurred in the erection of said plant, but that the city wishes to pay the excess proceeds into a fund other than the general fund. In our judgment, the provisions of K.S.A. 15-809 apply only to cities of the third class, and are not uniformly applicable to all cities. Therefore, it is our opinion that, in the circumstances you describe, the city of Stockton may exempt itself, by charter ordinance, from the portion of said statute which requires that the excess proceeds from the sale a city-owned utility be paid into the city's general fund.

The other statute about which you inquire, K.S.A. 55-211a, provides, in part:

"The governing body of any municipal corporation . . . owning or having control of any tract of land within the state of Kansas, is hereby authorized and empowered to lease

such lands, or any part thereof, for drilling for oil or gas upon such terms as may be agreed upon.

. . . .

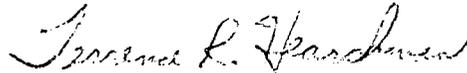
"Any moneys arising from such lease or the production of oil or gas shall become a part of the general fund of any such municipality"
(Emphasis added.)

In our opinion, the provisions of K.S.A. 55-211a are uniformly applicable to all cities, and the city of Stockton may not exempt itself from that portion of the statute which prescribes that moneys arising from the lease of lands for drilling for oil or gas, or from the production of oil or gas, shall become a part of the city's general fund.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm