



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 236

John F. Thompson  
P. O. Box 69  
400 Shawnee Street  
Leavenworth, Kansas 66048

Re: Townships and Township Officers -- Water Supply --  
Authority of Township to Terminate Service For  
Nonpayment of Charges

Synopsis: A township may, pursuant to K.S.A. 80-1601 et seq., establish and maintain a water department. Such a township has the express authority given by statute in operating the department, as well as any powers necessary to exercise those given directly by statute. Among these implied powers is the authority to bill water users, and, if such charges are not paid, to terminate service. However, the township may not agree to act as a billing agency for another municipality, and terminate water service when such municipality's bill is not paid. Cited herein: K.S.A. 12-3903, 12-3908, 80-101, 80-1601, 80-1605.

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Dear Mr. Thompson:

As attorney for Delaware Township, you request our opinion on a question involving the authority of the township to contract with the city of Lansing concerning issuance of utility bills. Specifically, you inquire whether the township, which operates its own water department, may be paid by the city for sending out monthly bills to users of the latter's sewage system. As an extension of this service, the township would terminate water service if the user did not pay his bill for sewer service to the city. Alternatively, you inquire whether the township and city could send out joint bills, with service terminated if the single bill was not paid.

Pursuant to K.S.A. 80-1601 et seq., Delaware Township has constructed and presently operates a water supply system for the township, including the city of Lansing, which was a third-class city prior to July 1, 1982. The city has installed a system of sanitary sewers within the city limits, and intends to bill users of the system on a monthly basis. Use of the sewage system is of necessity dependent on use of the water system, and the township has agreed to provide access to its records so that the city's bills can be calculated based on water so used. Your inquiry stems from the fact that, as the city is not the provider of water, it cannot terminate water usage if a bill for sewer usage is not paid. Hence, the city desires that some arrangement can be made whereby the township may terminate water service if the city's charges are unpaid.

In addition to the powers set forth at K.S.A. 80-1601, a township possesses the general authority to "make all contracts that may be necessary and convenient for the exercise of its corporate powers." (K.S.A. 80-101.) Beyond such express powers, a township does have those limited, implied powers which are necessary to effectively exercise the former. See, e.g., Tilton v. Riley County, 194 Kan. 250 (1965), State ex rel. v. City of Topeka, 176 Kan. 240 (1954). Accordingly, while the statutes nowhere authorize the township to terminate service for non-payment of water bills, such authority must of necessity be inferred. Apart from this limited exception, however, a township has only such powers as are conferred on it by statute, and has none of the flexibility of home rule. See, e.g., Paul v. Topeka Township Sewer Dist. No. 2, 199 Kan. 394 (1967).

In addition to possessing home rule power (Kan. Const., Art. 12, §5), a city such as Lansing is given specific authority by K.S.A. 12-860 in this area. In pertinent part, this statute reads:

"The city is authorized to discontinue water service for any failure to pay the rates or charges fixed for either water service or the use of the sewage disposal system or both when due, and if there is sewage disposal system use without water service the charge may be certified as a lien against the property served and assessed as a tax by the county clerk or county assessor."

Termination of water service by a city for non-payment of a sewer fee was implicitly recognized in Jennings v. Walsh, 214 Kan. 398 (1974), with the opinion also holding that charges must be tied to the use of the services. In these respects,

the situation in Jennings differed from the landmark case of Uhl v. Ness City, 590 F.2d 839 (10th Cir. 1979), in which the services were separate (i.e., water service and solid waste pick-up).

In view of the above, it is our opinion that Delaware Township may not contract with the city of Lansing whereby the township will terminate water service to a person who fails to pay his or her sewage charges to the city. No statute authorizes such action by the township on behalf of another municipality, nor is such action necessary to carry out any express duty or function of the township. The township is in no way connected with the providing of sewage service by the city, and therefore has no interest in penalizing persons who fail to pay the required charges to the city.

It would further be our opinion that the situation presented here is similar to, although not identical with, that in Uhl v. Ness City, supra. As in Uhl, the city here is authorized to collect charges for the use of its services, and, if such charges are not paid, they may be certified as a lien against the property served. The Court of Appeals in Uhl found that the cities named as defendants therein were accordingly without the power to collect the fees in another manner, namely by tying them to water service. This is even more so here, where water service is supplied by a distinct and separate municipality. Furthermore, while a customer who uses the sewage service must of necessity also have water service, numerous other circumstances may affect the amount of use to which the two services are put, and a dispute with the city over the former should not force a citizen to risk losing water service from the township as well. As the U.S. Supreme Court noted in Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1, 18, 56 L.Ed.2d 30 (1978):

"Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety."

In conclusion, a township may, pursuant to K.S.A. 80-1601 et seq., establish and maintain a water department. Such a township has the express authority given by statute in operating the department, as well as any powers necessary to exercise those given directly by statute. Among these implied powers is the authority to bill water users, and, if such charges are not paid, to terminate service. However, the

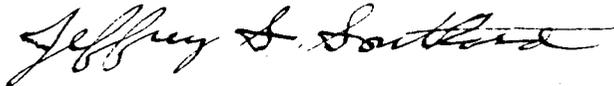
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township may not agree to act as a billing agency for another municipality, and terminate water service when such municipality's bill is not paid.

Very truly yours,



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RTS:BJS:JSS:hle