



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84- 128

The Honorable Robert G. Miller
Mayor
City of Edgerton
P. O. Box 255
Edgerton, Kansas 66021

Re: Cities and Municipalities -- Public Utilities --
Acquisition and Operation of City Plants

Cities of the Third Class -- Miscellaneous Provisions --
Natural Gas Production and Sale

Synopsis: K.S.A. 12-842 imposes no restrictions as to the class of consumers who may be served by a municipal gas utility; nor does that statute prohibit such a utility from serving persons outside the boundaries of the city. However, a municipal gas utility must obtain a certificate of need from the Kansas Corporation Commission in order to provide service more than three miles from the corporate limits of the city.

K.S.A. 15-1117 et seq. authorize any city of the third class situated in a recognized and established natural gas field to drill for, produce and sell natural gas. No restrictions are imposed on the authority of a third class city to sell any natural gas produced, and such a city may sell natural gas to any prospective purchaser, provided the city does not convey gas through pipelines in such a manner as to become subject to regulation by the Kansas Corporation Commission as a "public utility." Cited herein: K.S.A. 12-842, 15-1117, 66-104, 66-131.

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Dear Mr. Miller:

You request our interpretation of K.S.A. 12-842 et seq. and K.S.A. 15-1117 et seq. Specifically, you indicate that the City of Edgerton is "looking into the possibility of drilling natural gas wells," and so request our opinion as to "who [the city] could sell natural gas to if such a project were approved and successful, i.e. private citizens living outside the city limits, business and other municipalities."

K.S.A. 12-842 confers certain proprietary powers upon second and third class cities to "embark on the business" of constructing and operating a variety of public utility facilities. See Kansas Power Co. v. Fairbanks, Morse & Co., 142 Kan. 109, 113 (1935). The statute was last amended in 1911, and provides in part that

"[a]ny city of the second or third class of the state of Kansas is hereby granted full power and authority . . . to purchase . . . construct and operate natural-gas wells . . . and to secure by lease, contract or purchase natural gas lands . . . for the purpose of supplying said city, its citizens and others with . . . gas"
(Emphasis added.)

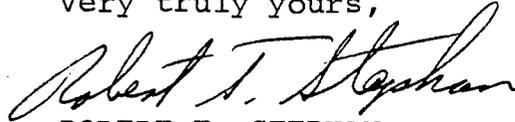
The Kansas Supreme Court has held that the above-quoted statute imposes no limitation "with respect to the class of consumers, whether individuals, partnerships, or public or private corporations" who may be served by a municipal utility. Kansas Gas & Electric Co. v. City of McPherson, 146 Kan. 614, 622 (1937). The court has also stated that K.S.A. 12-842 does not prohibit a municipal utility from serving persons outside the territorial boundaries of the city. Municipal Power Transmission Co. v. City of Lyndon, 127 Kan. 59, 65 (1928). However, it should be noted that a municipal gas utility must obtain a certificate of need from the Kansas Corporation Commission in order to provide service more than three miles from the corporate limits of the city. See K.S.A. 66-104 and 66-131.

You also request our opinion regarding the parameters of a city's authority to sell natural gas under K.S.A. 15-1117 to K.S.A. 15-1122. Those statutes authorize any city of the third class situated in a recognized and established natural gas field to drill for, produce and sell natural gas. (See Kansas Attorney

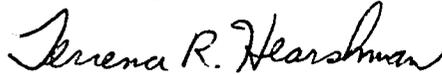
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General Opinion No. 80-21, copy enclosed.) The act places no restrictions on the authority of a third class city to sell natural gas produced under the provisions of K.S.A. 15-1117 et seq., and it is our opinion that a city may sell natural gas to any prospective purchaser, provided the city does not convey gas through pipelines in such a manner as to become subject to regulation as a "public utility." See K.S.A. 66-104.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:sc

Enclosure