



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

November 27, 1985

ATTORNEY GENERAL OPINION NO. 85- 166

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534

Re: Cities and Municipalities--General Provisions--
Annexation of Lands Located in Water Districts;
Title to Facilities; Agreement; Compensation

Synopsis: While K.S.A. 12-527 prescribes no time limit within which a city must purchase rural water district lines and facilities located upon land annexed by the city, such purchase must be accomplished within a reasonable time following annexation. The reasonableness of the time within which a city proposes to consummate such a purchase is a question of fact to be ascertained in light of all facts and circumstances. Additionally, a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527. Cited herein: K.S.A. 12-527; 26-504.

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Dear Senator Montgomery:

You request our interpretation of K.S.A. 12-527. That statute prescribes a procedure for the transfer of rural water district facilities located upon land annexed by a city, and provides as follows:

"Whenever a city shall annex lands located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., title to all facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property, as agreed by the governing body of the city and the board of directors of the district, or if such agreement is not made, then as determined by the city: Provided, That the board of directors of any such district may bring an action in the district court to determine the reasonableness of the amount of compensation fixed and determined by any such city. The governing body of the city and board of directors of the district may provide, on such terms as may be agreed, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to customers outside the city. In addition to compensation for such physical facilities the city may pay to the water district an amount equal to that portion of outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city."

You first inquire as to whether there is "a reasonable length of time in which existing rural water district facilities and lines should be purchased by the annexing city." In this regard, while it is clear that the water lines and facilities are ultimately to be purchased by the annexing city (except where there is an agreement that water transmission facilities owned by the district and located within the city are retained by the district for the purpose of transporting water to customers outside the city), the statute does not prescribe the period of time within which the purchase is to be made.

Under these circumstances, it is our opinion that the "reasonable time rule" is applicable. That rule is as follows:

"Where no time has been fixed for the performance of an act to be done, the law implies that performance is to be accomplished

within a reasonable time." Singer Company v. Makad, Inc., 213 Kan. 725, Syl. ¶7 (1974).

Moreover, "[w]hat constitutes a reasonable time depends on the facts and circumstances of the particular case." (Id. at Syl. ¶8). Accordingly, the purchase mandated by K.S.A. 12-527 could be deferred indefinitely if such course of action was reasonable under the particular facts and circumstances.

You next ask whether the long-term viability of the remainder of the water district should be a factor in determining the value of the annexed water lines, i.e. if remaining patrons cannot, at reasonable rates, support the water plant operation should this be a factor in determining the value of the annexed lines. In this regard, we note that courts in other jurisdictions have awarded severance damages in eminent domain proceedings where only part of a public utility system is taken. [See 27 Am.Jur.2d Eminent Domain §340; Puget Sound Power & Light Co. v. City of Puyallup, 51 F.2d 688, 697 (9th Cir. 1931); Brunswick & T. Water Dist. v. Maine Water Co., 59 A. 537, 542 (Me. 1904).] Further, while no Kansas cases have applied the language of K.S.A. 26-504(d)(4), that paragraph would appear to allow the use of the remaining property to be considered in determining an award in an eminent domain proceeding. However, under the plain and unambiguous provisions of K.S.A. 12-527, a city must pay a rural water district only for the value of the physical facilities actually acquired, and has the option of paying an additional amount equal to that portion of the outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city. Accordingly, in our opinion a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527 as they presently read.

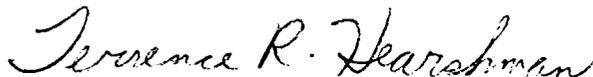
In summary, it is our opinion that while K.S.A. 12-527 prescribes no time limit within which a city must purchase rural water district lines and facilities located upon land annexed by the city, such purchase must be accomplished within a reasonable time following annexation. The reasonableness of the time within which a city proposes to consummate such a purchase is a question of fact to be ascertained in light of all facts and circumstances.

Additionally, a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm