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ATTORNEY GENERAL OPINION NO. 89- 125

The Honorable B. D. Kanan
State Senator, Fifth District
5111 Garfield
Kansas City, Kansas 66102

Re: Constitution of the State of Kansas--Corporations--
Cities' Powers of Home Rule

Synopsis: Kansas City, Kansas' Charter Ordinance No. 104 provides for an election prior to the sale of the municipal waterworks or electric-light system owned and operated by the Kansas City Board of Public Utilities (BPU) and the City of Kansas City. The ordinance further provides that the City, upon recommendation from the BPU, may sell portions of the waterworks or electric-light system without an election if the portions recommended for sale are deemed obsolete and the BPU continues to provide water and electric services to the citizens of Kansas City, Kansas. We believe the City has the authority to adopt this ordinance pursuant to its home rule powers. Cited herein: K.S.A. 12-101; 13-1223; 15-809; Kan. Const., Art. 12, §5.

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Dear Senator Kanan:

You request our opinion regarding Kansas City, Kansas' Charter Ordinance No. 104 which amends Charter Ordinance No. 88 by adding a new section relevant to the sale of the City's municipal waterworks or municipal electric-light system. You

question the validity and effectiveness of Charter Ordinance No. 104 on three separate grounds.

First, you question whether any guarantee of an election actually exists under the terms of the ordinance. The section in question states in pertinent part:

"Prior to the sale of the municipal waterworks, the municipal electric-light system of plants or combination thereof, owned and operated by the Board of Public Utilities of Kansas City, Kansas, and the City of Kansas City, Kansas, the governing body of the City shall by Resolution call for an election to be held on said proposed sale. Neither the waterworks plant, electric light system, nor combination thereof, may be sold unless the proposed sale and the bid therefor are submitted to and approved by a majority of the qualified electors of the City voting in an election called and held thereon.

. . . .

"If a majority of the voters approve the sale of the waterworks plant, the electric-light system, or a combination thereof, the governing body may proceed to sell such system.

"Nothing in this section shall be construed as requiring an election for the governing body of the City upon recommendation from the Board of Public Utilities to approve the sale of a municipal waterworks plant or any portion of the electric-light system when the Board of Public Utilities determines said facility is no longer necessary for the provision of water or electricity to the citizens of Kansas City, Kansas, and when the Board of Public Utilities shall thereafter continue to provide the water and electric service to said citizens."

You are concerned that the provision authorizing a sale without an election allows the governing body of the City to

bypass the election requirement any time the Board of Public Utilities (BPU) recommends the sale. However, we read the ordinance to provide that the City may act without an election only when the BPU recommends sale of a portion of the waterworks or the electric-light system, and then only if the BPU determines that portion of the facility is obsolete and that the BPU can and will continue to provide water and electric service to the citizens of Kansas City, Kansas. In other words, the election requirement applies to a proposed sale of the entire waterworks or electric-light system. Thus, I do not agree that the provision authorizing a sale without election renders the earlier election requirement meaningless. The provisions speak to two separate sets of circumstances.

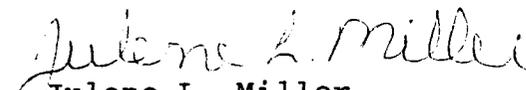
Secondly, you question whether article 12, section 5 of the Kansas Constitution (the city home rule amendment) "would allow for a more direct ordinance addressing the sale of municipally owned waterworks or electric plants without an election." There is currently no state statute which requires an election prior to the sale of a municipal waterworks or electric-light system owned and operated by a city of the first class and a BPU. (Compare K.S.A. 15-809 dealing with cities of the third class). K.S.A. 13-1223 merely provides that a BPU may not sell real property or improvements thereon without approval of the governing body of the city. (In any event, it is our understanding that Kansas City chartered out of K.S.A. 13-1223 pursuant to Charter Ordinance No. 88.) Further, K.S.A. 12-101 grants to cities the general power to "[s]ell and convey any real or personal estate owned by the city." [But see Attorney General Opinion No. 80-19, "Although it is clear that municipality may dispose of its property, and that there is considerable discretion vested in the governing body in determining the terms of such disposal, it is our opinion that such power does not include the authority to make an outright gift of such property."] A city's home rule power, which is to be construed liberally [Kan. Const., art. 12, §5(d)], enables that city to determine its local affairs and to enact ordinances even when not specifically empowered to do so by state statute. Clafin v. Walsh, 212 Kan. 1, 6-7 (1973); Anderson Construction Co. v. City of Topeka, 228 Kan. 73, 79 (1980). This power is restricted only in certain prescribed cases, i.e. when the legislature has enacted a law uniformly applicable to all cities which regulates the subject area [City of Junction City v. Griffin, 227 Kan. 332 (1980)] or which expressly preempts the field [Uhl v. City of Ness City, 590 F.2d 839 (10th Cir. 1979)]. See

Attorney General Opinion No. 81-100. In that the legislature has not spoken to the issue in question, Kansas City is free to provide for the sale of the waterworks or electric-light system without an election if it is in the public interest.

Finally, you inquire whether the synopsis, or title, of the ordinance should include a complete listing of the ordinance's objectives. We have previously opined that "the title of an ordinance is sufficient if it is broad enough to indicate in general terms the provisions of the ordinance, and it need not include all the details of the ordinance." Attorney General Opinion No. 88-58. See also Garten Enterprises Inc. v. The City of Kansas City, 219 Kan. 620, 622 (1976). Based on these authorities, the title to Charter Ordinance No. 104 appears sufficient even though the exception to the general election requirement is not mentioned therein.

Very truly yours,


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RTS:JLM:jm