



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY 40602  
(502) 564-3940

July 5, 1994

Mr. Frank K. Downing  
General Manager  
Owen Electric Cooperative  
510 South Main Street  
Owenton, Kentucky 40359-1261

Dear Mr. Downing:

On June 24, 1994, we received your memo requesting an opinion on the legality of a Gallatin County Ordinance that prohibits a utility from providing electric service to a new building until the owner furnishes the utility a "Proof of Septic System Installation and Approval" issued by the Gallatin County Health Department.

The Public Service Commission is empowered by KRS 278.040(2) with "exclusive jurisdiction over the regulation of rates and service of utilities." Any person, except a city, that distributes electricity to or for the public, for compensation, falls within the statutory definition of a utility. KRS 278.010(3). Thus, Owen Electric Cooperative ("Owen Electric") is a utility under KRS Chapter 278 and its service is under the exclusive jurisdiction of the Commission. In addition, the statute provides that:

The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.

KRS 278.280(2).

The Commission has neither prescribed a regulation authorizing an electric utility to condition its service upon a customer's installation of a septic system nor accepted such a rule submitted by Owen Electric. Consequently, if any customer has complied with the Commission prescribed regulations and Owen's rules as contained in its tariffs, service must be provided.

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Furthermore, we note that while KRS 67.083(3)(r) empowers a county to regulate sewage service, it explicitly prohibits the regulation of electricity. For these reasons, we conclude that regulating the conditions under which electric service can be furnished is reserved for the Commission to the exclusion of a county.

This letter represents the Legal Division's interpretation of the law as applied to the facts presented in your letter. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Should you have any questions concerning this opinion, please contact our staff attorney Richard Raff at (502) 564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Don Mills".

Don Mills  
Executive Director

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payment to a man hired for the purpose of developing industry in the county.

1956 OAG 37,951. The fiscal court of a county which does not have a city of the first or second class may employ a purchasing agent under this section.

#### 10. Contracts and franchises

634 SW(2d) 417 (Ky. 1982); *Boyd Fiscal Court v. Ashland Public Library Bd of Trustees*: A fiscal court may be legally bound only through its record or official orders and not through implied contract.

570 SW(2d) 663 (Ky. App. 1978); *Handy v. Warren County Fiscal Court*. Statutory procedures require advertisement and competitive bidding but not award of contract to lowest and best bidder.

162 Ky 314, 172 SW 497 (1915); *Letcher Fiscal Court v. Spangler*: A county is not liable on an implied contract growing out of the fact that it accepted services rendered or materials furnished. It can only be made liable by virtue of an express contract made by its authorized officers.

148 Ky 822, 147 SW 918 (1912); *Flowers v. Logan County*. Officer of agent of county authorized to spend money to build bridge cannot recover from county portion of fund spent on roads, in absence of authority of fiscal court.

147 Ky 69, 143 SW 773 (1912); *American Car & Foundry Co v. Johnson County*. See for water courses; franchises concerning; powers of court respecting.

OAG 82-163. Cable TV franchises can only be given under the bidding procedure outlined in Ky Const § 164. The number of franchises let depends on public necessity and lies within the sound discretion of the fiscal court.

OAG 82-141. Any county in Kentucky with less than 300,000 in population may, through its fiscal court, voluntarily enter into a binding agreement with its county police force with respect to wages, hours, and other conditions of employment.

OAG 82-60. The fiscal court may lease real property not needed by the county for governmental purposes to a private entrepreneur. The county's agreement to keep the leased property in repair would constitute an indebtedness under Ky Const § 157 and Ky Const § 158.

OAG 81-166. In making a franchise award for cable television, a fiscal court may require that the service be up to the level required by the FCC, and may provide for reasonable rates of charges to be imposed upon cable TV users.

OAG 66-468. The fiscal court has the power to enter into a contract to establish a county-wide garbage collection system and the fiscal court can legally award a franchise for such collection.

OAG 64-881. A magistrate acting alone and without the authority of the fiscal court cannot legally procure and contract for road and bridge maintenance and construction services and materials and any claim or contract in excess of the budget fund or appropriation is void.

OAG 64-476. No individual on the fiscal court, including the county judge, who is a member, can make contracts for the county or collect or disburse county funds unless the fiscal court as a unit has expressly consented.

1959 OAG 43,945. Livestock raised on county farm and worth about \$3,000 should be sold at a public sale only after due advertisement of such sale, but where the public is generally informed that stock will be auctioned on a particular day, no special advertising would be necessary.

**67.081 Fiscal courts authorized to appropriate and donate county funds to nonprofit corporations or associations organized for recreation or conservation purposes; conditions—Repealed**

HISTORY: 1978 H 152, § 19, eff. 6-17-78  
1956 c 85

**67.082 Declaration of epidemic area; animal population reduction program; liability of state personnel**

(1) Notwithstanding the provisions of KRS 150.370, 525.130, or any other statute that may be in conflict herewith, any county fiscal court may, whenever an epidemic or potential epidemic of a disease transmissible to man and domestic animals exists or is threatened in any species of wildlife, declare all or any portion of said county to be an epidemic area. Following such declaration the fiscal court may, with approval of the cabinet for human resources and department of fish and wildlife resources conduct control programs, including population reduction programs, against any species of wildlife including, but not limited to, red and gray foxes, skunks and rodents which may be serving as reservoirs and/or vectors of any disease transmissible to human beings and/or domestic animals including, but not limited to rabies, leptospirosis, salmonellosis and Rocky Mountain spotted fever. Such control programs may include but shall not be limited to hunting, trapping, vaccination and use of poisons. Technical and operational assistance for such programs shall be made available by the cabinet for human resources, the department of fish and wildlife resources, and the department of agriculture. A control program established under authority of this section may be conducted by the individual or joint action of the referred-to state agencies, the local health department or individual property owners designated as agents of said cabinets and departments. In the event poisonous baits are used to control an outbreak of rabies in wildlife, such programs shall be under the direction of the cabinet for human resources. All pet animals in the area shall be quarantined for the duration of the program by action of the local board of health. Such programs shall be regulated to provide specific identification of bait station locations, daily check of each bait station, and positive pickup and destruction of all unconsumed baits at the end of the program.

(2) No liability shall be imposed upon any state agency or local agency or any employe or agent thereof for any injury occurring to domesticated animals, individuals or property in carrying out programs in good faith authorized by this section, but all persons and agencies shall be liable to the extent otherwise provided by law for ordinary and gross negligence.

HISTORY: 1984 c 111, § 47, eff. 7-13-84  
1972 H 101, § 1(1)(2)

Penalty: 67.992

#### 67.083 Additional powers of fiscal courts

(1) It is the purpose of this section to provide counties as units of general purpose local government with the necessary latitude and flexibility to provide and finance various governmental services within those functional areas specified in subsection (3) of this section, while the general assembly retains full authority to prescribe and limit by statute local governmental activities when it deems such action necessary.

(2) The fiscal court of any county is hereby authorized to levy all taxes not in conflict with the constitution and statutes of this state now or hereafter enacted.

(3) The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds and employ personnel in performance of the following public functions:

(a) Control of animals, and abatement of public nuisances;

(b) Regulation of public gatherings;

(c) Public sanitation and vector control;

(d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;

(e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;

(f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums and other recreational and cultural facilities and programs;

(g) Provision of cemeteries and memorials;

(h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation and wildlife;

(i) Control of floods;

(j) Facilitating the construction and purchase of new and existing housing; causing the repair or demolition of structures which present a hazard to public health, safety or morals or are otherwise inimical to the welfare of residents of the county; causing the redevelopment of housing and related commercial, industrial and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;

(k) Planning, zoning and subdivision control according to the provisions of KRS Chapter 100;

(l) Adoption, by reference or in full, of technical codes governing new construction, renovation or maintenance of structures intended for human occupancy;

(m) Regulation of commerce for the protection and convenience of the public;

(n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 through 244;

(o) Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles;

(p) Provision of public buildings, including armories, necessary for the effective delivery of public services;

(q) Cooperation with other units of government and private agencies for the provision of public services, including but not limited to training, educational services and cooperative extension service programs;

(r) Provision of water and sewage and garbage disposal service but not gas or electricity; including management of onsite sewage disposal systems;

(s) Licensing or franchising of cable television;

(t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;

(u) Provision of police and fire protection;

(v) Regulation of taxis, buses and other passenger vehicles for hire;

(w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;

(x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;

(y) Preservation of historic structures.

(4) The county judge/executive is hereby authorized and empowered to exercise all of the executive powers pursuant to this section.

(5) A county acting under authority of this section may assume, own, possess and control assets, rights and liabilities related to the functions and services of the county.

(6) If a county is authorized to regulate an area which the state also regulates, the county government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation.

(a) If the state statute or administrative regulation prescribes a single standard of conduct, a county ordinance is consistent if it is identical to the state statute or administrative regulation.

(b) If the state statute or administrative regulation prescribes a minimal standard of conduct, a county ordinance is consistent if it establishes a standard which is the same as or more stringent than the state standard.

(c) A county government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a county government is authorized to act.

(7) County ordinances which prescribe penalties for their violation shall be enforced throughout the entire area of the county unless:

(a) Otherwise provided by statute, or

(b) The legislative body of any city within the county has adopted an ordinance pertaining to the same subject matter which is the same as or more stringent than the standards that are set forth in the county ordinance. The fiscal court shall forward a copy of each ordinance which is to be enforced throughout the entire area of the county to the mayor or chairman of the board of trustees of each city in the county.

(8) The powers granted to counties by this section shall be in addition to all other powers granted to counties by other provisions of law. A permissive procedure authorized by this section shall not be deemed to be exclusive or to prohibit the exercise of other existing laws and laws which may hereafter be enacted but shall be an alternative or supplement thereto.

(9) Any agency of county government exercising authority pursuant to subsection (3)(y) of this section shall, prior to exercising such authority, obtain the voluntary written consent of the owner of the structure. Consent may be obtained only after advising the owner in writing of any advantages and disadvantages to the owner which are likely to result from the exercise of such authority.

HISTORY: 1982 c 254, eff. 7-15-82

1980 c 149, § 3; 1979 ex s, H 68, § 1; 1978 H 152, § 3;

1976 ex s, S 18, § 6; 1972 S 165