COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

JOHN B. BRECKINRIDGE
ATTORNEY GENERAL

May 1, 1969

Mr. Walter L. Gatinna
Attorney at law
Kirk Building
Hartford, Kentucky

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(1)

Dear Mr. Gatinna:

This is in answer to your letter of April 28 in which you refer to the fact that the city of Hartford, a city of the fifth class which you represent, owns and operates a municipal water and sewer system. The system presently provides water service to adjoining areas immediately outside of the city limits. You further state, however, that at the present time there are several subdivision projects in the planning stage which will require a substantial amount of water. These subdivision projects are not within the city limits nor does the property adjoin the city limits, but is located in one instance approximately one-half mile from the city limits. You also state that between the subdivision projects and the city limits there is some farming land which is not the type that can be subdivided. The city, however, desires to provide water service to the subdivision projects and in order to do so it will be necessary to extend the water lines from about three-fourths of a mile to possibly a mile. Under the circumstances you request an opinion concerning the following:

> "The City Council has requested that we ascertain from your office the legality of the city constructing water mains outside of the city limits and issuing Revenue Bonds for the purpose of defraying the costs of such construction."

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As you know, of course, KRS 96.150 authorizes any city to extend its water system outside of the city limits and into any territory that lies within fifteen miles of the corporate limits of the city and KRS 96.370 authorizes the issuance of bonds for water extensions. There are several cases construing, in effect, the provisions of KRS 96.150 as clearly authorizing a city to extend its water systems outside of the city limits and furnish water to customers located there. See Louisville Water Company v. Public Service Commission, Ky. 318 S.W. 2d 537 (1958) and City of Cold Springs v. Campbell County, 334 S.W. 2d 269 (1960).

Your basic question, however, appears to be the effect of the provision under KRS 96.150 that apparently limits such extension to customers in an area contiguous to the city. We do not find any cases touching on this question which includes those previously cited and as a consequence such would be subject to litigation. Even though the subdivisions to be serviced are actually noncontiguous to the city in the strict sense of the word, they are certainly located within the fifteen mile radius of the city and within the territory through which the water line is to be run that is contiguous to the city. We doubt that the Legislature intended to prevent the extension of water service unless the territory actually serviced was touching the city limits. It is also noted that pursuant to KRS 96.130 any city is permitted to furnish water to another city with no reference to the necessity of the two cities being contiguous to each other.

We have found one foreign case styled Paris Mountain Water Company v. City of Greenville, 119 S.C. 36, 96 S.E. 545 in which one of the questions raised involved a water extension made to a territory which was noncontiguous to the city. The controlling statute was similar to ours. The court rejected the contention on the ground, however, that no proof had been submitted showing the basis for this contention. At the same time, though, the court said:

> "It is a matter of common knowledge that generally the water supply and reservoirs and lead pipes of many towns are of necessity many miles without the corporate limits. It is also a matter of common

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knowledge that many of the towns of the state, and chief amongst them Greenville, are surrounded by manufacturing plants domiciled just out of the corporate limits, and by suburban villages operated under separate charters, and divided off from the city by an arbitrary line."

The term "contiguous" has been defined in the case of Parsons v. Dils, 172 Ky. 774, 189 S.W. 1158 (1916) as follows:

"Adjacent, in actual close contact, touching, near; adjoining, neighboring; lying adjoining; touching sides; touching along a considerable line."

This case indicates that the term "contiguous" does not necessarily mean that the territory must be touching.

Under the circumstances we believe that the city would be authorized to furnish water to the subdivision projects referred to, even though they are not contiguous to the city, in the sense of touching the corporate boundaries, however, as we have previously pointed out, the question would be subject to litigation.

Yours very truly,

JOHN B. BRECKINRIDGE
ATTORNEY GENERAL

By Walter C. Herdman
Assistant Attorney General

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