



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

ROBERT F. STEPHENS
ATTORNEY GENERAL

May 6, 1976

Mr. William J. Lewis, III
Superintendent
Grayson Utility Commission
Grayson, Kentucky 41143

OAG 76 234

Dear Mr. Lewis:

This is in answer to your letter of April 30 in which you raise the basic question as to whether or not the Grayson Utility Commission can extend a water line for approximately 1,000 feet outside of its corporate limits to the Wilson, Star Water District boundary to connect with a proposed pumping station to be erected by the district. Said extension would be for the purpose of serving the district and would include the installation of fire hydrants along the water main. More specifically, your questions are as follows:

- "1. Whether it would be legal for Grayson Utility Commission to finance this section of line?
Can Grayson Utility Commission sell water to this private owned company or finance any part of it?
- "2. Whether the Water District would have to finance this?
- "3. Whether Wilson, Star Water District if they financed this could tap new users on this line where Grayson Utility Commission presently have lines laid?

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"4. Could any user presently on Grayson Utility Commission in this area be put on this Water District line (this might occur due to pressure drop necessitated by a pump needed to fill tank for Water District)?"

In response to your questions, we refer you to KRS 96.150 which reads as follows:

"Any city that owns or operates a water supply system may extend the system into, and furnish and sell water to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus. For this purpose the city may condemn or otherwise acquire franchises, rights and rights of way, as private corporations may do."

The above statute clearly authorizes any city to extend its water supply system outside its boundaries and into any territory contiguous thereto and at the same time install necessary apparatus which we believe could include fire hydrants along the main line. The purpose of said extension would be to sell water to nonresidents. The statutory reference to the sale of water to any person would include any corporation or body politic as the term is defined in KRS 446.010 (2). This would mean that the city could, we believe, extend its water line to the water district boundary as contemplated and sell water to the district presumably created under Chapter 74. We call your attention to the case of City of Cold Spring v. Campbell County Water District, Ky., 334 S.W. 2d 269 (1960), wherein the Court of Appeals pointed out that water districts have no exclusive right to furnish service within their confines. At the same time the Court called attention to the provisions of KRS 96.150 and concluded that both the city and the water district had the legal right and authority to furnish water services to customers within the water district.

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Of course, the city is not required to extend the system outside of its boundary as held in the case of *Austin v. City of Louisa, Ky.*, 264 S.W. 2d 662 (1954), but if it desires to do so, it may extend the system and pay for the extension. At the same time, the city may charge a reasonable rate for water furnished by contract at higher rates than those charged resident customers. See *McClellan v. Louisville Water Co., Ky.*, 351 S.W. 2d 197 (1961). We also might point out that the users of the extended water facility outside the city can be required to provide their own conduit to the main line of the system or pay for the extension of the water mains, such as a tap on charge, which would be subject only to the qualification that such must be fair and reasonable and bear a substantial relationship to the cost involved in providing the service to the facility located outside of the city. See *McQuillin, Mun. Corps.*, Vol. 12, §35.34 (c).

On the other hand, we believe that a water district established under Ch. 74 would have to extend its boundaries in order to serve customers presently located outside of its boundaries pursuant to KRS 74.110, though in order to simply obtain the city water supply, it could possibly construct the connecting water line in question.

Yours very truly,

ROBERT F. STEPHENS
ATTORNEY GENERAL


By: Walter C. Herdman
Assistant Deputy Attorney General

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