COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

ROBERT F. STEPHENS
ATTORNEY GENERAL

March 24, 1977

Mr. Robert Murphy
Community Development Specialist
Gateway Area Development District
P. O. Box 107
Owingsville, Kentucky 40360

OAG 77 188

Dear Mr. Murphy:

This is in reply to your letter raising a question concerning a city owned water system serving residents of another county. You specifically ask:

> "Does an incorporated (6th class) municipality in one county have to have permission from the Fiscal Court of the other county to extend lines and serve customers in the other county? There is no water district in the other county, just a municipal system owned by the county seat town. This system does not serve this section of the county at present."

We first direct your attention to KRS 96.150, which states 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, <u>any territory contiguous to the city</u>, and may install within that territory necessary apparatus. For this purpose the city may condemn or otherwise acquire franchises, rights and rights of ways, as private corporations may do." (Emphasis supplied.)

While there is no requirement in the statute that a city secure permission from the county in connection with extending the water system into the county, the statute does state that the water system may be extended into any territory contiguous to the city. In order to answer your question concerning a city's authority to extend its water system into another county, we must determine the meaning of the words "contiguous" and "contiguous territory."

The word "contiguous" is defined in Black's Law Dictionary, Fourth Edition, p. 391, as follows:

> "In close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by. The term is not synonymous with 'vicinal.'"

The exact meaning of "contiguous" is not clear from the above-quoted definition as it refers to both actual physical contact and near, though not in contact. In Persons v. Dils, 172 Ky. 774, 189 S.W. 1158, 1159 (1916), the only Kentucky case we can find defining "contiguous," the Court said in part as follows:

> "While there would seem to be from this definition some divergence of opinion as to the exact meaning of the word 'contiguous,' we are inclined to adopt that meaning which would make two tracts of land contiguous where they have a common corner, and which would make it possible to step from one to the other without crossing any other tract of land."

In 17 C.J.S. Contiguous, p. 359, it is said that the word "contiguous" is a relative term, depending considerably on the context and the subject under consideration, and has been construed variously by courts according to circumstances. This source further states:

> "In what may be called its primary sense, 'contiguous' has been defined as meaning immediately successive; in actual, close, or actual or close, contact, and it has been said that the common, ordinary, and approved meaning of the word is actual contact or touching. Thus 'contiguous' is defined as meaning in contact with; joining; touching; touching along a considerable part or the whole of one side; touching or joining at the edge or boundary; meeting or joining at the surface or border; continuous, with its parts in uninterrupted contact; uninterrupted connection; not separate."

> "In what may be described as its secondary sense, the word has been defined as meaning close together; in close proximity to; near or near to, although not in contact; near in succession; neighboring, bordering, or joining. . . . "

"Contiguous territory" is defined in part in 17 C.J.S. Contiguous, p. 362, as follows:

> "Territory touching, adjoining and connected, as distinguished from territory separated by other territory. This is the ordinary and plain meaning of the words, a meaning that does not imply territory near by, in the neighborhood or locality of. . . . "

See also 9 Words and Phrases, Permanent Edition, at "Contiguous" and "Contiguous Territory" as well as Schneider v. Rockefeller, N.Y., 293 N.E.2d 67 (1972), where the court said "contiguous territory" means territory touching, adjoining and connected as distinguished from territory separated by other territory. For other cases dealing

with "contiguous" and "contiguous territory" under various situations but requiring physical contact and an actual joining or touching of the territories, see:

> Stewart Concrete & Material Company v. James H. Stanton Construction Company, Missouri, 433 S.W.2d 76 (1968);
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> Joaquin Independent School District v. Fincher, Texas, 510 S.W.2d 98 (1974);
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> City of Safford v. Town of Thatcher, Arizona, 495 P.2d 150 (1972);
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> Watson v. Doolittle, Ohio, 226 N.E.2d 771 (1967);
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> People Ex Rel. Cherry Valley Fire Protection District v. City of Rockford, Illinois, 256 N.E.2d 653 (1970).

While KRS 96.150 authorizes any city owning or operating a water supply system to extend its system beyond the city limits, the territory so served must be contiguous to the city. The word "contiguous" in its primary sense requires physical contact and an actual joining or touching. Thus, in our opinion, a city could clearly extend its water system into the county in which it is located as such county territory would be contiguous to the city. See OAG 76-554, copy enclosed. In most instances, however, (and we do not know the precise geographical conditions involved in your particular situation) a city water company could not extend its system into another county as such territory would not be contiguous to the city because there would be territory between the city and the other county. The territory to be served in the other county would not be contiguous to the city if it did not in some manner touch, adjoin and connect to the city's territory. Where the city may extend its water system beyond

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the city limits, such authority is not dependent upon approval from the fiscal court.

Very truly yours,

ROBERT F. STEPHENS
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Thomas R Emerson

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Encl.