

170 S. 475 (1936), the Court held that if a person, who had prepared an absent ballot and deposited it to be cast as the law directed, dies before election day, the ballot should not be counted. In so holding, the Court stated and we quote:

". . . The Constitution (article 18, §9) provides that the general election shall be held on the first Tuesday after the first Monday in November and not at any other time. No ballots have been cast nor will be cast by absentee voters until that date arrives. The law has merely provided for the accommodation of those who will not be present at their respective election precincts on that day that they may prepare a ballot which will be cast for them on that day, but if a person preparing such a ballot and depositing it to be cast as the law directs should die before election day, the authority vested in the county judge to cast that ballot for such elector will cease to exist, and so also if, after preparing such a ballot to be cast in the general election, that proposed elector should be convicted of a felony, his right to suffrage will cease and his ballot cannot lawfully be cast. . . ." (Emphasis added.)

Also, since a voter who dies before the election obviously cannot vote on election day, such person would not at that time retain the qualifications for voting eligibility required under § 145 of the Constitution and KRS 116.025 and would not remain a legally registered voter under KRS 116.045.

Under the circumstances, we believe that where a person applies for an absentee ballot and proceeds to vote and return the ballot to the clerk's office by mail as the statutes require but dies before election day, such ballot should be rejected by the board when it proceeds to review and count the absent votes under KRS 117.335, upon information submitted, pursuant to a written challenge or by the board's own information, to the effect that the absent voter was deceased.

In answer to your second question, a person holding the office of constable who, following his election and during his term, moves out of the district from which he is elected and establishes legal residence therein, becomes disqualified as to residency pursuant to §100 of the Constitution. However, until he is removed as a usurper by the commonwealth's attorney, pursuant to Ch. 415 KRS, his official acts as constable would be valid as he would be considered a de facto officer as held in a number of cases, among them being Commonwealth ex rel Breckinridge v. Winstead, Ky., 430 S.W.2d 647 (1968).

OAG 77-668

CITY - (4th class)  
SEWERS - Serving nonresidents, extension of city sewer lines,  
tapping on to city sewer line

SYLLABUS: The city does not have the authority to

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extend its sewer lines beyond the corporate limits for the purpose of serving nonresidents. The city may permit nonresidents to tap on to existing city sewer lines so long as the nonresidents pay for the cost of installing any lines needed to reach the city lines as well as paying the tap-on fees and charges.

To: Rodney A. Miller, Esq., 311 Main Street, Fulton, Ky.  
By: Thomas R. Emerson, Asst. Atty. Genl., October 27, 1977.

This is in reply to your letter raising a question concerning a proposed contract for use of the city's sewer system between the fourth class city of Fulton, Kentucky, and residents of the State of Tennessee. The cities of Fulton, Kentucky, and South Fulton, Tennessee, are adjacent and contiguous with the state boundary line dividing them. Fulton, Kentucky, maintains a sewer line on State Line Road serving the citizens of Fulton. South Fulton, Tennessee, does not have a sewer line in that particular area but does provide other residents of the city with sewer services. A Tennessee land owner and developer seeks to develop land in Tennessee along State Line Road and would like to tap on to the sewer line of the city of Fulton. South Fulton officials have no objections to the proposal.

You cite KRS 94.160 and ask whether pursuant to that and other related statutes the city of Fulton, Kentucky, may provide its sewer facilities for the use and benefit of Tennessee residents.

KRS 94.160 provides in part that any city of the fourth class may purchase, establish, erect, maintain and operate a sewerage system within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with a sewerage system. In our opinion, neither this statute nor any other statute authorizes the city to extend its sewers beyond the corporate limits to serve nonresidents. In connection with the extension of a city sewer system, see OAG 77-477, copy enclosed, where we said in part as follows:

" . . . [W]e find no statutory authority authorizing the extension of sewers outside the corporate limits of the city. As a matter of fact, we have held that no such authority exists unless the extension is based on purely a health and sanitation ground with respect to the municipal residents, in which case such an extension would probably be valid even in absence of specific statutory authority. . . ."

However, if we understand your situation, you are not referring to an extension of the city's sewer system beyond corporate limits but a proposal allowing nonresidents to tap on to an existing city sewer line. Presumably, the existing city lines and treatment facilities are sufficient to accommodate those persons seeking to tap on and the acceptance of such nonresident users will not result in additional expenses to city residents now using the system.

At this point, we direct your attention to City of Lexington v. Jones, 289 Ky. 719, 160 S.W.2d 19 (1942), where a suit had been brought to have a city ordinance, providing for issuance of permits to persons outside the city limits to use the city sewage system on payment of prescribed fees, declared void. The Court, at page 22 of its opinion, said in part:

"We are concluded that so much of the ordinance as offers the use of its sewer facilities to those who live outside the city limits is valid, and as we read it there is nothing which savors of a denial of the due process of law, or denying the users the equal protection of the law."

In *Davisworth v. City of Lexington*, 311 Ky. 606, 224 S.W.2d 649, 651 (1949), dealing with the use of city sewers by nonresidents, the Court stated in part:

"The right of a city to furnish this type of service to those who reside without its limits, where the city does not attempt to construct and operate the extended facility, is not in question. See *Rogers v. City of Wickliffe*, 94 S.W. 24, 29 Ky. Law Rep. 587; *City of Henderson v. Young*, 119 Ky. 224, 83 S.W. 583. It is not, and could not plausibly be contended that the City initially is under any duty to furnish such service. See *McQuillin, Municipal Corporations*, (2d Ed. 1943) Section 1821, page 1079; and *Dyer v. City of Newport*, 123 Ky. 203, 94 S.W. 25. Surely those who have never used the service would have no right whatsoever to tie into the city system without its permission, and no law or principle requires the granting of such permission."

We also direct your attention to OAG 66-292, copy enclosed, at page four, and *McQuillin, Mun. Corp.*, 3rd Ed. (Revised), Vol. 11, §§ 31.13, 31.30 and 31.30a, particularly the latter, where the following appears:

"The municipality may fix fees, rents, charges, and rates for making connections with and for using its sewers and drains, outside the municipal limits, as well as within, and may, by law, have a lien upon the property therefor. Sewer charges are usually established by ordinances, the validity of which is presumed."

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"Persons required or permitted to connect their properties or premises with municipal sewers may be required to do so at their own expense, or, where the laws so provide, the connection may be made by the city and the cost charged against the property owner . . . ."

Therefore, in our opinion, the city does not have the authority to extend its sewer lines beyond the corporate limits for the purpose of serving nonresidents. However, the city may permit nonresidents to tap on to existing city sewer lines so long as the nonresidents pay for the cost of installing any lines needed to reach the city lines as well as paying the tap-on fees and charges. The city may set reasonable fees for the use of its sewer lines by nonresidents and may withdraw, at some future time, its consent to furnish sewer services to nonresidents.