

1984 Ky. Op. Atty. Gen. 2-177, Ky. OAG 84-147,
1984 WL 185798 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 84-147

April 19, 1984

Martin W. Johnson, Esq.
Marshall County Attorney
Marshall County Courthouse
P. O. Box 172
Benton, Kentucky 42025

Dear Mr. Johnson:

This is in reply to your letter asking about a water district and whether it is required to charge for water supplied to and used by a fire district.

A local water district (presumably organized pursuant to the provisions of KRS Chapter 74), has asked you whether it is required to furnish water free of charge to a fire protection district formed pursuant to KRS Chapter 75. The fire district is now using water drawn from fire hydrants installed on the water district's mains without payment. This is causing a problem in that the water district must report to the Public Service Commission concerning all water produced and sold and water produced but unaccounted for will affect the water district's future rate applications and other operations.

Your specific question is whether the water district is required to furnish water without charge to a fire district or may the water district require the fire district to contract for water service at a reasonable rate and require it to account for water used during fire fighting operations.

A water district organized pursuant to the provisions of KRS Chapter 74 is a utility [[KRS](#)

[278.010\(3\)\(d\)](#)], and a public utility subject to the jurisdiction of the Public Service Commission [[KRS 278.015](#)].

As a regulated utility a water district is subject to the provisions of [KRS 278.170](#) which state as follows:

“(1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

(2) Any utility may grant free or reduced rate service to its officers, agents or employes, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents and employes of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence or other calamity. The terms 'officers' and 'employes,' as used in this subsection, include furloughed, pensioned and superannuated officers and employes, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

*2 (3) The commission may determine any question of fact arising under this section.”

In 73B C.J.S. Public Utilities § 10, it is stated in part that a customer's right to utility service is not absolute but depends on payment for the services provided. The customer must submit to such reas-

onable conditions as the utility sees fit to impose. Furthermore, in 73B C.J.S. Public Utilities § 43, it is written that, "...It is as improper to discriminate in favor of a municipality, or a benevolent, religious, or eleemosynary institution, as in favor of any other customer of a utility, unless the statute expressly provides therefor..." See [Idaho Power Co. v. Thompson, 19 F.2d 547, 580 \(Dist. Ct., D. Idaho, S.D., 1927\)](#) and 94 C.J.S. Waters § 297.

On the other hand, however, McQuillin, Mun. Corp. (3rd Ed.), Vol. 12, § 35.37g states in part that independent of a statute the right of a city to furnish water free for municipal and charitable purposes "can hardly be doubted." Of course, in this state and in other states, municipally owned, operated or controlled utilities are not subject to the jurisdiction of a Public Service Commission. In addition, with the advent of municipal home rule a city and its utility system would have more flexibility, generally, than a state regulated water district which has only those powers specifically granted or which can be reasonable inferred from specific grants of authority.

In 64 Am. Jur. 2d Public Utilities § 55, it is stated that the judicial decisions as to the right of a water company to charge a city for fire service are inconsistent. However, in 64 Am. Jur. 2d Public Utilities § 113 it is conceded that, "On the other hand, there are many cases, particularly those decided by public service commissions, holding that the giving by a public utility or a municipal corporation furnishing public service of free or reduced rates to or for public, municipal, charitable or religious institutions or purposes constitutes unjust discrimination against other consumers. See also an annotation in [37 A.L.R. 1511](#) which in part collects the cases upholding and denying the right of a water company to charge a municipality for fire service.

Since a water district organized and functioning under the provisions of KRS 74 is a public utility subject to the jurisdiction of the Kentucky Public Service Commission, [KRS 278.170](#) is applicable. While a utility may grant free or reduced rates to charitable and eleemosynary institutions, a fire dis-

trict organized under KRS Chapter 75 is not such an institution in our opinion. Furthermore, agreement from the Public Service Commission must be obtained for any free or reduced rate service and there is no indication that such an agreement has been obtained or even sought in this situation. Thus, at the present time there is no authority for requiring the water district to furnish water free of charge to a fire protection district.

Sincerely,
David L. Armstrong
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Thomas R. Emerson
Assistant Attorney General

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