

Court of Appeals of Kentucky.
 ROGERS
 v.
 CITY OF WICKLIFFE et al.
 June 7, 1906.

Appeal from Circuit Court, Ballard County.

“Not to be officially reported.”

Action by N. L. Rogers against the city of Wickliffe and another. From a judgment sustaining a demurrer to the petition, plaintiff appeals. Affirmed.

West Headnotes

Municipal Corporations 268  277

268 Municipal Corporations

268IX Public Improvements

268IX(A) Power to Make Improvements or Grant Aid Therefor

268k277 k. Improvements and Works Beyond Boundaries of Municipality. **Most Cited Cases**

A city owning and operating a waterworks system may contract to supply water for use outside of the city, where there will be sufficient water remaining to supply the residents of the city.

*24 Reeves & Tharp, for appellant. Geo. Reed, for appellee city of Wickliffe. W. T. White, for appellee Henderson.

NUNN, J.

It appears that the city of Wickliffe, by proper procedure, constructed and has in operation it system of waterworks. On the 6th day of April, 1906, the city entered into a contract with its coappellee as follows: “This contract, made and entered into by and between the city of Wickliffe, of the first part, and Wm. Henderson,*25 party of the second part, witnesseth: That the said city of Wickliffe hereby agrees to furnish to the said party of the second

part, water from its water mains at the northern boundary of said town for the exclusive domestic use of the family of said Henderson at the price of double the amount paid by citizens of said town, of similar residence, per month, and the said party of the second part agrees to tap the mains at the point hereinbefore mentioned, and to run a line of pipe to his house at his own expense, and to maintain said line free of expense to the said party of the first part. Said second party also agrees to put in and keep in repair such hydrants as he may deem necessary for his use at his expense, and to hold said city guiltless for any damages that may be done to his property by reason of fire thereat. Said contract to begin on the 1st day of April, 1906, and to continue for the period of 15 years.”

Wm. Henderson, one of the appellees, owned a farm adjacent to the city. He at that time resided in the city, but was making preparations to move out to his farm, and desired that the city furnish him water upon the terms named in the contract. The appellant instituted this action seeking to have the city enjoined from carrying out the contract or diverting the water from the city to the use of Henderson. The appellant averred in substance, that the water had been provided for the use of the people of the city, and it did not, by its council or mayor, have the power or authority to furnish water to Henderson at his place outside of the city. He did not allege that there was not sufficient water to furnish the residents of the city all the water necessary for their use, and supply Henderson with water under this contract. He bases his action upon the theory that the city did not have the power or authority to furnish water to persons other than those who reside in the city. The lower court sustained a demurrer to the petition.

The case of the *City of Henderson v. Young*, 83 S. W. 583, 26 Ky. Law Rep. 1153 is conclusive of this case. In that case the court said: “In the management and operation of its electric plant a city is not exercising its governmental or legislative powers,

but its business powers, and may conduct it in the manner which promises the greatest benefit to the city and its inhabitants in the judgment of the city council, and it is not in the province of the court to interfere with the reasonable discretion of the council in such matters."This applies to furnishing water by a city as well as electricity. The contract with Henderson appears, from its terms, to be a beneficial one for the city. If, however, it was made to appear that to furnish Henderson there would not be sufficient water remaining to supply the residents of the city, the case would be different.

The judgment is affirmed.

Ky.App. 1906.
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29 Ky.L.Rptr. 587, 94 S.W. 24

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