

OPINION OF THE GENERAL COUNSEL  
MISSOURI PUBLIC SERVICE COMMISSION

MUNICIPALITIES: (1) Commission does not have  
UTILITIES: jurisdiction to require certifi-  
WATER CORPORATION: cate of public convenience and  
MUNICIPALLY OWNED WATER SYSTEMS: necessity, or jurisdiction over  
service or rates, of a water supply  
system owned by a municipality and serving customers beyond the corpor-  
ate limits of said municipality. (2) A municipality does not have  
authority to own or maintain water distribution facilities outside  
its limits for the purpose of supplying an individual with water.

Opinion No. 73-1

Cross-reference Op. General Counsel  
No. 69-14 and 70-14

May 22, 1973

Honorable William L. Hungate  
Representative  
Ninth District  
House Office Building  
Washington, D. C.

Dear Representative Hungate:

This is in reply to your letter of May 3, 1973, which requests  
an opinion concerning the following factual situation:

The St. Peters Municipal Water Works serves the municipality  
of St. Peters and also serves areas beyond the corporate boundary  
of St. Peters. The rate charged customers beyond the corporate  
limits of St. Peters is the same as those in the city with the  
addition of a \$3 per month "out of town" service charge which  
normally amounts to 25-30% of the total bill.

The issues are as follows

- Does the Missouri Public Service Commission have  
jurisdiction over a municipally owned water works  
system which supplies customers in areas beyond  
the corporate limits?
2. Can the Public Service Commission control the rates  
and tariffs of such a municipal water works with  
regard to those customers served beyond such corporate  
boundaries?

ATTACHMENT 2

Does a municipality have authority to construct and maintain a water distribution system which is designed to serve individuals beyond the corporate boundaries?

Jurisdiction of the Public Service Commission over water companies was originally conferred by Laws 1913 p. 565 now embodied in Section 386.250(7) RSMo 1969. The original language of the section provided as follows:

The jurisdiction, supervision, powers and duties of the Public Service Commission herein created and established shall extend under this chapter: \* \* \* (7) To all water corporations, and to the land, property dams, water supplies, or power stations thereof and the operation of same within this state.

The Laws 1917 p. 433 added the following proviso to subsection 7:

\* provided, that nothing contained in this section shall be construed as conferring jurisdiction upon the public service commission over the service or rates of municipally owned water plant or system in any city of this state, except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality

language of this section remains the same as in section 386.250(7) RSMo 1969.

The original enabling legislation granting jurisdiction of the Public Service Commission over water companies, including those municipally owned, was embodied in Laws 1913 p. 603. In Public Service Commission vs. City of Kirkwood 319 Mo. 562, 4 SW2d 773 (Mo. 1928) the Supreme Court held that the Public Service Commission under the then existing statutes had no authority to compel a municipally operated and owned water system to seek a certificate of public convenience and necessity. The court concluded, however, after considering the statutory proviso presently embodied in Section 386.250(7) that the Public Service Commission could properly regulate the rates and tariffs applicable to customers outside the corporate boundaries. The principle that the Public Service Commission cannot compel a municipality operating a water system to obtain a certificate of public convenience and necessity was affirmed in subsequent cases: Missouri Power & Light Company vs. City of Pattonsburg 343 Mo. 1128, 12 SW2d 20 (Mo. 1939); Lockhart vs. Kansas City 351 Mo. 1218, 175 SW2d 814 (Mo. 1943); Lightfoot vs. City of Springfield 361 Mo. 359, 236 SW2d 348 (Mo. 1951) although distinguish

However, the question of whether the Public Service Commission retained jurisdiction over rates and tariffs of persons served by municipal water systems outside the corporate limits was apparently still governed by the rule in City of Columbia vs. Public Service Commission, supra. In Speas vs. Kansas City 329 Mo. 184, 44 SW2d 108 (Mo. 1931), the Court considered the charge by certain Kansas City residents that the city's supplying to nonresidents had resulted in an inadequate supply of water for the inhabitants. The Court concluded that, "complaints of this character must be heard and passed on first by the public service commission." The Public Service Commission Act provides that the jurisdiction, supervision, powers and duties of the commission shall extend to the service and rates of any municipally owned water plant "where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality". (Id. p. 114) However, in City of Columbia vs. State Public Service Commission 329 Mo. 38, 43 SW2d 813 (Mo. 1931) decided shortly after the Speas case, the Court concluded, after an examination of the general enabling legislation of the Public Service Commission, that the Commission had no jurisdiction over rates. The court stated that the original enabling legislation "\* \* \* limit(ed) the objects of 'regulation and control' to 'public service corporations, persons and public utilities', without mentioning municipalities. \* \* \* (W)e are constrained to hold that the power to fix such rates has not been validly conferred upon the public service commission, and the judgment is affirmed. (This involves interpretation of Section 69 of the Public Service Commission Act, now Section 393.140 RSMo 1969). Although the court was interpreting the authorization of the Public Service Commission to regulate municipal electric installations, authority to regulate water systems is embodied in the same part of the act. It should be further noted that the City of Columbia case has been subsequently followed; State ex rel. City of Sikeston vs Public Service Commission 336 Mo. 85 82 SW2 105 (Mo. 1960)

he statutory authority for cities to e  
 orks is embodied in Section 91.010 RSM  
 969 provides as follows:

ities ~~owning~~ water s na supp  
 ny city in this state which owns and rates  
 ystem of waterworks may, and is hereb uthor  
 nd impowered to, supply water from it aterw  
 o other municipal corporations for their  
 he use of their inhabitants, and also to persons  
 nd private corporations for use beyond t e corpora  
 imits of such city, and to enter into co tracts  
 herefore, for such time, upon such terms and under  
 uch rules and regulations as maybe agree  
 he contracting parties.

Thus it would appear that although a municipality may sell water from its facility to individuals or other cities beyond its boundaries the question of regulatory jurisdiction of the Public Service Commission remains doubtful in light of the apparent conflict between the Speas case, supra, and the City of Columbia case, supra. The legislature apparently laid this issue to rest pursuant to the 1949 statutory revisions of Section 5645, 5646, 5647, and 5648 RS 1939. These sections were repealed and reenacted as Section 393.140 to 393.160 RS 1949 omitting the reference to municipal utilities as proper subjects of regulation by the Public Service Commission (Section 393.130 VAMS, Revision Comment). The aforementioned revisions apparently follow the line of reasoning in the City of Columbia case, supra, effectively removing regulation of municipal water companies from the jurisdiction of the Commission. The Attorney General has concluded that the sole provision remaining in the statutes, Section 386.250(7) RSMo 1969 (relating jurisdiction of the PSC over rates and tariffs of municipal water companies operating outside their corporate boundaries) is no longer controlling (Op. Atty. Gen. No. 6, Belt, April 27, 1967).

One issue remains; that of whether a municipality, although authorized to sell water beyond its boundaries, is authorized to own and operate the transmission and distribution facilities necessary to distribute such water beyond the corporate boundaries. The Attorney General has concluded that Section 91.040 RSMo 1959, applicable to agreements between cities for a supply of electricity is substantially identical with the provisions of Section 91.070 RSMo 1959 applicable to agreements between cities for the supply of water. In analyzing the case of Taylor vs. Dimmitt, 336 Mo. 330 78 SW2d 841, (Mo. 1934), (which held that the statutes applicable to the sale and supply of electricity beyond the corporate limits of a city did not authorize the city to construct facilities for delivery from the corporate limits to the customer), it was concluded that the doctrine expressed in that case is equally binding on Section 91.070 RSMo 1959. "\* \* \* (I)t must be concluded that a city supplying water to another city, town, or village does not have the authority to own and operate facilities to conduct the supply of water to the city, town, or village being supplied." The opinion concluded, by analogy, that the city may not construct facilities beyond its corporate limits for the purpose of supplying an individual with water. (Op. Atty. Gen., Supra, pp.3 and 4).

#### CONCLUSIONS

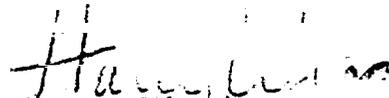
Therefore, it is the opinion of this office that this Commission does not have the jurisdiction to compel a municipally owned operated water company to obtain a certificate of public convenience and necessity; nor does this Commission have jurisdiction over the

rates, tariffs, or other aspects of service of such companies serving individuals beyond the corporate limits.

It is further concluded that a municipally owned and operated water system may sell water to individuals beyond the corporate boundaries, but such municipality has no authority to construct or maintain water supply and distribution facilities beyond such boundaries.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Michael K. McCabe.

Sincerely yours,

  
Harry Wiggins  
General Counsel

KM:mh