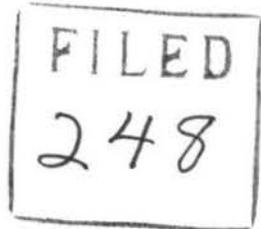


Answered by Letter - Klaffenbach
OPINION LETTER NO. 248

April 26, 1971



Honorable Maurice Schechter
State Senator
Thirteenth District
Room 427 - State Capitol
Jefferson City, Missouri 65101

Dear Senator Schechter:

This letter is in response to your request for an opinion in which you ask whether subsection 5 of Section 393.130, RSMo 1969, precludes a municipality from voluntarily paying fire hydrant fees.

In particular you refer to a recent request by the City of Ferguson asking that the Public Service Commission permit the St. Louis County Water Company to amend its tariff to allow such payment.

Subsection 5 of Section 393.130 states:

"5. No water corporation shall be permitted to charge any municipality or fire protection district a rate for the placing and providing of fire hydrants for distribution of water for use in protecting life and property from the hazards of fire within such municipality or fire protection district. Nothing herein shall prevent such water corporation from including the cost of placement and maintenance

Honorable Maurice Schechter

of such fire hydrants in its cost basis in determining a fair and reasonable rate to be charged for water. Any such fee or rental charge being made for such fire hydrants whether by contract or otherwise at the time this act shall take effect may remain in effect for a period of one hundred twenty days after this section shall take effect."

We further note that on April 7, 1971, the Public Service Commission denied said application by the City of Ferguson. For your information, a copy of the application and its attachments and the order of the Commission are enclosed.

We note that the Commission in its order concluded "that the parties to this action are attempting to circumvent the statutes and to do what the statutes specifically denies them authority to do."

We note also that the order of the Commission became effective on April 22, 1971, and we understand that no rehearing has been requested under Section 386.500. Therefore, the question is not preserved for judicial review under Section 386.510, RSMo 1969.

The power of a municipality to contract may be express, necessarily implied, or inherent. 10 McQuillin, Municipal Corporations, 3rd Ed., §29.05 p. 230. However, a municipality may not assume a liability where none exists. Id. 241, 244.

It is therefore our view in answer to your question that, in the premises, the city may not voluntarily assume this obligation.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures