

MUNICIPAL CORPORATIONS:) City owning electric light plant may sell
ELECTRICITY:) surplus electrical energy to persons outside
corporate limits, under certain conditions.

June 30, 1938.



Honorable W. L. Mulvania
City Attorney
City of Rock Port
Rock Port, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of June 15th, in which you request the opinion of this Department on the question set out in your letter, which is as follows:

"As the attorney for the City of Rock Port I would appreciate very much having the opinion of your Department upon a municipal question involving our city.

"The City of Rock Port has practically completed the construction of a municipal light plant and distribution system. The City already has its municipal water plant, the pump being located about two and one-half miles from the city limits. In the construction of the light plant and distribution system it is of course necessary to run a line out to the water plant outside the city limits. This line runs along the highway and passes along the premises of two or three persons. At least one of these persons would like to have the privilege of getting lights from this line by hooking on to it, buying his own transformer, if necessary. The question involved is whether the City would have the legal authority to render electric service to this prospective customer who does not live within the city.

"I have read the case of Taylor et al. v. Dimmitt, Mayor, et al. found in 78 S. W. (2d) 841, which lays down the general principle that a municipality does not have the statutory authority to construct, maintain, and operate an electric transmission line for the purpose of furnishing service to consumers outside its corporate boundaries. There is a distinction to a certain extent in the facts of that case and the one that is before us. In our case we must maintain this line for our own municipal purpose and so it would not be necessary for the city to do anything further in the way of extending its facilities beyond the corporate limits in order to accommodate this customer. But there are certain statements in the opinion that might indicate that the rule would be applicable even in a case like ours."

Briefly, your question is, whether the City of Rock Port, which has completed a municipal light plant and distribution system, and having erected electric light lines to its municipal water plant which is outside the city limits, may sell surplus electrical energy to person adjacent to said power lines, and living outside the corporate limits of said city.

Section 7642, R. S. Mo. 1929 (Mo. St. Ann. Sec. 7642, p. 6031) provides as follows:

"Any city in this state, which owns and operates any electric light or power plant, may, and is hereby authorized and empowered to supply electric current from its light or power plant to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts

therefor for such time and upon such terms and under such rules and regulations as may be agreed upon by the contracting parties."

The legislature by this Act, which was enacted by the Legislature in 1911 (Laws of Missouri, 1911, p. 351) extended the authority of a city owning and operating an electric light plant to permit such city to supply electric current from its electric light plant to other municipalities and also persons and private corporations beyond the corporate limits of such city.

We note what you say in your letter of request with reference to the case of Taylor v. Dimmitt, 78 S. W. (2d) 841, 98 A. L. R. 995, as perhaps being applicable to the question stated in your letter. The court in this case, in construing Sections 7642, 7643 and 7644, decided that the City of Shelbina which owned a municipal light plant was without "statutory authority to construct, maintain and operate an electric transmission line for the purpose of furnishing service to consumers outside its corporate boundaries." The decision in the above case is not decisive of the question asked in your letter of request.

The well established rule is that a municipal corporation has only such powers as are clearly and unmistakably granted to it by its charter or by other acts of the Legislature, and consequently can exercise no powers not expressly granted to it, except those which are necessarily implied or incident to the powers expressly granted and those which are indispensable to the declared objects and purposes of the corporation. 19 R. C. L. 768, 49 A. L. R. p. 1239. Gainesville v. Dunlap (1917) 147 Ga. 344, 94 S. E. 247; Steitenroth v. Jackson (1911) 99 Miss. 354, 54 So. 955; Kearny v. Bayonne (1919) 90 N. J. Equ. 499, P. U. R. 1919E, 696, 107 Atl. 169; Western New York Water Co. v. Buffalo (1925) 213 App. Div. 458, 210 N. Y. Supp. 611; Richards v. Portland (1927) Or., 255 Pac. 326; Haupt's Appeal (1889) 125 Pa. 211, 3 L. R. A. 536, 17 Atl. 436; Childs v. Columbia (1910) 87 S. C. 566, 34 L. R. A. (N. S.) 542, 70 S. E. 296; Paris v. Sturgeon (1908) 50 Tex. Civ. App. 519, 110 S. W. 459; Farwell v. Seattle (1926) 43 Wash. 141, 86 Pac. 217, 10 Ann. Cas. 130.

By Section 7642, supra, cities owning and operating electric light or power plants were authorized to sell to persons and private corporations for use beyond the corporate

limits of such city and to enter into contracts upon such terms and conditions as may be agreed upon by the contracting parties for the selling of surplus electrical energy by them. This statute changed the rule with reference to cities selling surplus electricity to consumers outside its corporate limits.

It was held in the case of *Speas v. Kansas City*, 44 S. W. (2d) 108, l. c. 113, that Kansas City "is operating its waterworks primarily for the purpose of supplying water for its own needs and the needs of its inhabitants, and is incidentally selling surplus water to nonresidents, without impairing the usefulness of its waterworks for said primary purpose, such exercise of its charter power to supply water to nonresidents is not inconsistent with its charter power to acquire and to operate waterworks for public purposes only, nor with the constitutional provision that taxes may be used for public purposes only." Many cases from other jurisdictions are cited in the opinion sustaining the above statement of the law.

On the question submitted in your letter the City of Rock Port has built a power line to its municipal pumping station outside the city limits, and as we understand it, a customer living near to this power line desires to have supplied to him from this line surplus electrical energy and the City desires to accede to his request if it may legally do so. Since the City has constructed this line primarily for the purpose of supplying electricity to its pumping station lying outside its corporate limits and same was not constructed for the purpose of delivering electricity to customers outside its city limits, we can see no objection to selling such electricity to customers along its power line.

It is therefore our opinion that under the state of facts as set forth in your letter that the city, so long as it maintains its power line constructed as aforesaid to its pumping station, may sell to customers along said line the surplus electrical energy of the city, but under the authority

Hon. W. L. Mulvania

-5-

June 30, 1938

of the Taylor v. Dimmitt Case, supra, it would have no authority to construct and maintain any part of a transmission line built primarily for the purpose of furnishing service to consumers outside its corporate boundaries.

Very truly yours

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

CRH:EG