

CONSTITUTIONAL CHARTER CITIES:
EASEMENTS:
CONDEMNATION:
ELECTRICAL POWER PLANTS:

The City of Columbia, Missouri, cannot lawfully acquire by purchase or condemnation title to property in Cooper County for the purpose of erecting and maintaining electrical power transmission lines.

OPINION NO. 299

November 21, 1967

Honorable A. Basey Vanlandingham
State Senator
12 Glennview Plaza
Box 711
Columbia, Missouri 65201



Dear Senator Vanlandingham:

This is in answer to your request for an opinion of this office, which request reads as follows:

"The City of Columbia, Missouri has issued bonds for the purpose of paying all or part of the cost of extending and improving its revenue-producing water and light works, under Section 27, Article 6 of the Constitution of Missouri, 1945.

"The City of Columbia desires to purchase electric power from the Union Electric Company at the Overton, Missouri Sub-Station of the Union Electric Company in Cooper County, about four miles west of the Boone County line.

"The City of Columbia further desires to acquire easements and construct, operate and maintain its own transmission line from Columbia to said Overton Sub-Station in Cooper County.

"Would you please render an opinion as to whether the City of Columbia, Missouri may legally condemn, purchase or hold title to property or easements thereon in Cooper County and outside the corporate limits of Columbia and construct, control, maintain and police its transmission lines thereon?"

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We note that Columbia, Missouri, is a constitutional charter city under the authority of Article VI, Section 19, Constitution of Missouri.

Section 82.010, RSMo 1959, reads as follows:

"1. Any city of this state framing and adopting a charter for its own government, whether under the provisions of section 19, article VI of the constitution of 1945, or under the provisions of section 16 or section 20, article IX of the constitution of 1875, is hereby defined and declared to be a constitutional charter city.

"2. All laws now existing or which may hereafter be enacted relating or making reference to cities under constitutional charter or constitutional charter cities, shall be deemed to and shall apply and be valid only in relation to cities of this state defined and declared in this section to be cities under constitutional charter."

Section 91.010, RSMo 1959, gives the City of Columbia the power to erect and operate its own electrical power plant. This section reads as follows:

"The city council of any city, town or village in this state shall have power to erect, maintain and operate water works, or to acquire waterworks by purchase and to operate and maintain the same, and to supply the inhabitants thereof with water; to erect, purchase, acquire, maintain and operate gas and power plants, electric light plants, ice plants or any other kind of plant, or device for lighting purposes, or to acquire and own the same by purchase and to maintain and operate such plants and supply the inhabitants of such cities, towns and villages with water, light, ice and power therefrom."

You have informed us that Columbia does own and operate its own plant.

Section 82.240, RSMo 1959, relating to constitutional charter cities authorizes such cities to provide in their charters that such cities shall have the power to acquire land for public use. This section reads as follows:

"It shall be lawful for any such city to make provision in its charter, or by amendment thereof,

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to acquire and hold by gift, devise, purchase or by the exercise of the power of eminent domain by condemnation proceedings, lands for public use, either within the corporate boundaries of such city or outside of such corporate boundaries, and within the territorial limits of the county in which such city may be situated, for public parks, cemeteries, penal institutions, hospitals, right of ways for sewers, or for any other public purpose, and to provide for managing, controlling and policing the same."

This section, then, limits the power of a constitutional charter city lawfully to provide in its charter for acquisition of land for an electrical power plant to territory within the county in which the city is located. Accordingly, it is our opinion that the City of Columbia, Missouri, cannot acquire by purchase or condemnation title to property in Cooper County for the purpose of erecting and maintaining electrical power transmission lines.

We have been referred to Section 91.570, RSMo Supp. 1965, but find that that section relates only to special charter cities having less than ten thousand inhabitants. Section 91.560, RSMo 1959. Therefore, that section is not applicable to Columbia, Missouri.

CONCLUSION

It is the opinion of this office that the City of Columbia, Missouri, cannot lawfully acquire by purchase or condemnation title to property in Cooper County for the purpose of erecting and maintaining electrical power transmission lines.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General