PUBLIC WATER SUPPLY DISTRICTS: EXTENSION OF SERVICES: The public water supply system can refuse to extend services because of anticipated excessive rates if it be affirmatively shown that the refusal was a result of a reasonable and impartial administrative determination.

September 16, 1969

OPINION NO. 314

FILED
314

Honorable Charles H. Dickey, Jr.
State Representative
Room No. 315 - 98th District
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Dickey:

This official opinion is issued in response to your request for a ruling and asking the following question:

> Can a rural public water supply district which has been formed with the use of FHA funds, refuse to accept an applicant by stating that due to the sparse population, the cost of installation would require excessive water rates?

The law applicable to this inquiry has been most concisely enunciated by the Kansas City Court of Appeals in Filger v. Public Water Supply District No. 1 of Clay County, 346 S.W.2d 567 (1961). One of the assignments of error urged by the unsuccessful applicant for increased water supply in that case was that one of the instructions of the trial court was erroneous in that it incorrectly stated the law. On appeal, the instruction attacked was held to properly declare the law of Missouri. The pertinent part of this instruction is as follows:

> "'The Court instructs the jury that under the law the management of the business and affairs and the exercise of the powers of defendant Public Water Supply District # 1 is vested in its Board of Directors; that the Board of Directors does not have an absolute duty to serve all inhabitants of the District with the amount of water such applicant may request, but, in the exercise of their discretion as such Directors, may refuse to furnish water to an applicant in the quantity requested, provided, however, such decision is not arbitrarily arrived at as a result of fraud or caprice or in an effort to discriminate against any particular applicant.'" (loc. cit. 573)

It appears that the issue of whether a public water supply district can refuse to extend service depends on a determination of fact. If the refusal is capricious, arbitrary, or discriminatory and not reasonably calculated for the protection of the present users, then the board of directors of such public water supply district is abusing its discretion by denying the application for services. The denial of the application is unlikely to be upheld, therefore, unless it be shown that it was the result of an impartial administrative determination based upon reasonable expectations as to the result of extending services.

The Office of the Attorney General is not equipped to make this determination of fact. Enclosed you will find a copy of a 1958 Attorney General's Opinion addressed to Senator Joynt (No. 46). Addressed to the question of the remedy of an applicant refused service by a public water supply district the conclusion of that opinion was that:

> " . . . a property owner in such water supply district seeking to enforce extension of the water district's services to his property must seek his remedy through the circuit court."

The circuit court, of course, is equipped to make necessary determinations of fact. The public water supply district in litigation concerning the refusal of application would

have the burden of proof to establish the fact that the refusal of the application was in good faith, non-discriminatory, and not the result of caprice.

We are advised by officials of the Farmers Home Administration that the agency does not require a water supply district to agree to furnish service to all applicants as a prerequisite to becoming eligible for funds made available by the Farmers Home Administration.

CONCLUSION

Therefore, it is the opinion of this office that a public water supply district can refuse to extend services because of anticipated excessive rates if it be affirmatively shown that the refusal was the result of a reasonable and impartial administrative determination.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Michael L. Boicourt.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. Atty. Gen. No. 46, Senator Joynt, 1-8-58.