

DISTRICTS: Water districts formed under Article 12, Chapt. 79, R. S. 1939, do not have exclusive right to sell water in their territorial limits.

February 17, 1943



Mr. Perry M. Cortner
Attorney at Law
Suite 306 Commerce Bldg.,
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 12th in which you request an opinion of this Department. Your opinion request, omitting caption and signature, is as follows:

"I represent Water District #6 of Jackson County, Missouri, and we are confronted with a situation whereby Kansas City, Missouri, is now laying a pipe line through our District directly from one side to the other side of our District and it may be that in the future the City may desire to sell water to our customers or prospective customers in our territorial District also we now have one small competitor who buys directly from the City and sells from its line to people in our District.

"We are incorporated under Chapter 79, Article 12, of the Revised Statutes for Missouri of 1939. I find no decisions in the State of Missouri by our Appellate Courts whereby I can use them for an authority in advising my client whether or not we have exclusive rights to sell water in our District and that should any other Water Company whether it be Kansas City or a private individual desire to go into our District and supply water to our customers or prospective customers

or other people within our District, whether we would be within our rights to file an injunction suit to prohibit this.

"Therefore I would appreciate your opinion as to whether or not we have exclusive rights to sell water within our territorial limits.

"Your opinion would be greatly appreciated by the writer as well as Water District #6 of Jackson County."

As you state in your request, there have been no court decisions on Article 12 of Chapter 79, R. S. Mo. 1939, which deal with the formation of public water supply districts. In view of this fact it is necessary to examine the statutes in such article in an effort to arrive at the intention of the Legislature at the time it was enacted. We feel that this can be accomplished by a study of Section 12620, of the Laws of Missouri for 1941, page 353, which provides as follows:

"This article is intended to make possible, through public corporations, in counties which now have or may hereinafter have a population of twelve thousand five hundred inhabitants or more, conveniences in the use of water, ample in quantity for all needful purposes and pure and wholesome in quality, furnished from common sources of supply to many inhabitants of our state now denied such privileges; and thereby promote public health and sanitation, make available conveniences not otherwise possible, and for the general public welfare."

This section amends Section 12620, R. S. Mo. 1939, by merely changing the necessary population from twenty-five thousand inhabitants to twelve thousand five hundred inhabitants. This number, of course, is the minimum basis as set by the Legislature.

As can be seen from reading this section of the statutes, the purpose of the formation of such public water supply districts

is for the promotion of public health and sanitation, to furnish conveniences not otherwise possible, and for the general public welfare. It is common knowledge that in many localities there is not an available water supply, and we feel that the intention of the Legislature in passing this Article 12, was for the benefit of the people living in such a locality and for their general welfare. If there is a possibility of a water supply from more than one source, of course this might possibly act to the benefit of the public also.

We have carefully studied and read the entire article, beginning at Section 12621 and ending with Section 12638, and also Section 12620 of the Laws of Missouri for 1941, and nowhere do we find in those provisions any intimation that such water district shall have exclusive right to sell water in the district included in its territorial limits.

Section 12624 sets out the powers of a public water supply district but does not say that it shall have the exclusive right to sell water in its district. These water supply districts may issue bonds and estimate the tax levy which is to be levied by the county court, but we do not feel that under any of the powers conferred upon these districts by the Revised Statutes that Water District No. 6 of Jackson County, Missouri, has the exclusive right to sell water in its territorial limits.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG