

Municipal Control Over Utilities

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The Oklahoma Constitution gives municipalities the power and right to make the business and governmental decisions that control their municipal utility operations. It says: "Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said corporation." Ok.Const. Art. 18, § 6.

This directly conferred right is a restraint against legislative interference with municipal operations. *State ex rel. Woods v. Cole*, 63 P.2d 730. The limitations on the Legislature extend to the incidents of engaging in the enterprise. **Discretion over rates, service extension and customer base within or without the corporate boundaries is essential to the viability of a municipal enterprise.** *In re. Bliss*, 285 P. 73, 77-78.

See the following cases:

1. *In re Supreme Court Adjudication of Initiative Petitions in Norman, Oklahoma*,

Numbered 74-1 and 74-2, 534 P.2d 3: Rate-making for a municipally-owned utility is necessary and incidental to the power constitutionally granted to the municipality to own and operate a public utility.

2. *State ex rel. Woods v. Cole, supra*, at page 734: All business questions are to be "determined by the officers of the city in their sound business judgment."

3. *City of Ardmore v. Excise Board of Carter County, supra*: The operation of the municipal utility must be free from any undue burden from any source which negates or destroys the ability of the municipality to engage in the utility for municipal purposes. The object of Article 18 Section 6 is to prevent the Legislature from regulating a municipality's exercise of its right to engage in business of a public nature.

This right and discretion extends to operations outside the corporate limits. See the following cases:

1. *City of Blackwell v. Lee*, 62 P.2d 1219: Establishing service territories outside the corporate boundaries, likewise, is an implied attribute of the right to engage in the enterprise.

2. *Crandall v. Town of Safford*, 56 P.2d 660 (Ariz. 1936). If a city has constitutional authority to engage in a business, it has the right and power to acquire, own and maintain the business within and without the corporate limits.

3. *State ex rel. R.J. Edwards, Inc. v. Keith*, 66 P.2d 1059: Express statutory authorization for municipal business outside the corporate boundaries (now 11 O.S.1991 Sec. 22-104), has been construed as merely "re-enacting" Article 18 Section 6.

Article 18 Section 6 prevents the Legislature from enacting any statute that would, directly or indirectly, regulate, curtail or terminate a municipality's full enjoyment of its right to exercise its business judgment over its municipal utility.