

Cities and Towns, Powers of to Sell Water From Municipal Plant. Municipal Water Works, Power of Cities to Sell Water From.

A city may sell water to consumers without the city limits if such sales will not interfere with the supply of the inhabitants of the town.

September 4, 1914.

Hon. Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date July 24th, submitting for my consideration the following question:

"Whether or not an incorporated city owning its own water service, would have the right to sell water to a consumer outside the city limits?"

The provisions of our Code giving cities the right to own water works are found in Sections 3205 and 3259, respectively, Section 3205 reads as follows:

"Every city or town organized under this title is entitled 'the city of (naming it), or the town of (naming it,) and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatever, and may have and use a common seal, may purchase, receive, have, take, hold, lease, use and enjoy property of every name or description, and dispose of the same for the common benefit, and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or of the state."

Paragraph 79 of Section 3259 provides as follows:

"The city or town council has power to adopt, enter into and carry out means for securing a supply of water for the use of a city or town or its inhabitants."

You will note that Section 3205 provides that cities may "purchase, receive, have, take, hold, lease, use and enjoy property of every name or description, and dispose of the same for the common benefit." Here would seem to be power to sell water from a municipal plant to consumers outside of the city limits, since such sales would bring a revenue, and inure to the common benefit. So long as such service did not interfere with the supply which the inhabitants of the city have a right to expect, there is no good reason, nor public policy forbidding it. Nor do I find any statutory prohibition against such sales. You are, therefore, advised that a city may sell water to consumers without the city limits, so long as such sales do not interfere with the supply to the inhabitants of the town.

Yours very truly,

D. M. KELLY,
Attorney General.