

FILE

Subject

*Litson - Public
Improvements - General*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

November 7, 1974

Opinion No. 74- 358

Mr. Lawrence H. Litson
Gove County Attorney
Gove, Kansas 67736

Dear Mr. Litson:

Having reviewed Opinion no. 73-289, you pose two questions concerning requirements applicable to the county solid waste management plan.

You ask whether it is mandatory under the regulations that the solid waste from each resident or commercial establishment be picked up by a licensed carrier, and if not, whether the county by resolution may require each resident or commercial establishment to have its waste removed once each week by a licensed carrier.

K.A.R. 28-29-9 sets standards for collection and transportation of solid wasters. In part, it states thus:

"(A) Solid waste materials, excluding bulky wastes, shall be removed from the storage containers on residential premises and disposed of in accordance with these regulations at least once each week.

Garbage and putrescible materials shall be removed from commercial or industrial properties as often as necessary to prevent health and nuisance conditions but at least once a week.

Trash and other combustible materials, free of putrescible material, shall be removed from commercial and industrial properties as often as is necessary to prevent overfilling of the storage facilities or the creation of fire hazards.

* * *

(B) All vehicles and equipment used for collection and transportation of solid waste materials shall be designed, constructed, maintained and operated in a manner that will prevent the escape of any solid, semi-liquid, or liquid wastes from the vehicle or container onto the ground, street, or highway."

Lawrence H. Litson
November 7, 1974
page two

In order that a county, e.g., may comply with the regulations, it is virtually necessary that it require carriers to be licensed, to assure that the vehicles and equipment of the carrier, as well as the manner in which the carrier disposes of the waste so collected, complies with the solid waste management plan and with the applicable regulations. In many counties, the carrier operates pursuant to a contract with the county, and often with cities within the county. In such instances, the county may not require formal licensure, as such, but through contractual provisions assures compliance with applicable standards by the contractor. Licensure, as such, is not mandatory under state law, although in the implementation of a solid waste management plan, the county is virtually obliged to assure, in some fashion, whether through contractual agreement, licensing proceedings or otherwise, that the carrier acts in accordance with the plan.

In our view, it is fully within the power of the county to require each residence and/or commercial establishment to have waste removed once each week by a carrier which is licensed, or is otherwise subject to regulation by the county. I enclose copies of opinions numbered 74-308, 73-392, and 74-332, which deal generally with the questions you pose.

I invite your attention to ch. 257, L. 1974, amending K.S.A. 65-3410 which clarifies and amplifies the power of counties in the collection of fees within the county solid waste service area. I hope this information, and the enclosures, will be helpful. If further questions remain, please do not hesitate to call upon us.

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:tp
Enclosures