



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

December 19, 1974

Opinion No. 74- 390

Mr. James R. Cobler, Director
Division of Accounts and Reports
State Capitol
Topeka, Kansas 66612

RE: Payment of county solid
waste disposal fees by
Kansas Military Board

Dear Mr. Cobler:

You have requested an opinion from this office relative to the payment of county solid waste disposal fees by the Kansas Military Board. Specifically, the question presented is whether an administrative board of the state is exempted from paying solid waste disposal fees charged against a national guard armory pursuant to Chapter 257, Laws of 1974 (amending K.S.A. 65-3401).

The particular exemption brought into question pivots upon Section 1, Article 11 of the Kansas Constitution and Chapter 427, Laws of 1974 (amending K.S.A. 79-201 Sixth) which essentially provide that property used exclusively by the state or any municipality or political subdivision of the state shall be exempt from taxation. However, the issue here is not whether the armory qualifies for the exemption, but whether the fee charged is to be considered a tax within the meaning of Chapter 427.

Chapter 257, Laws of 1974 provides in pertinent part:

". . . the board of county commissioners of any county may, by resolution establish a schedule of fees to be imposed on real property within any county solid waste service area, revenue from such fees to be used for the acquisition, operation and maintenance of county waste disposal sites and/or for financing waste collection, storage, processing,

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reclamation, and disposal services, where such services are provided. In establishing the schedule of fees, the board . . . shall classify the real property within the county solid waste service area based upon the various uses to which the real property is put, the volume of waste occurring from the different land uses and any other factors that the board determines would reasonably relate the waste disposal fee to the real property upon which it would be imposed.

(4) The delinquent fees set forth in the report as confirmed shall constitute assessments against the respective parcels of land and are a lien on the property for the amount of such delinquent fees. A certified copy of the confirmed report shall be filed with the county clerk for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the county clerk of the county in which the property is situated, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary county and valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem property taxes shall be applicable to such assessments."

It is at once apparent from the foregoing that the legislature intended these fees to be computed and collected in the same manner as are special assessments. Several characteristics of special assessments are present: (1) the fees are levied only on the land; (2) no personal liability is present; (3) the fees are based upon the benefits; and (4) the fees are exceptional as to time and locality. See generally 70 Am Jur 2d, Special or Local Assessments, 1 et seq.

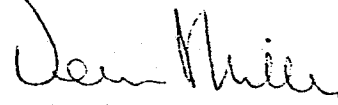
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The patent analogy between special assessments and solid waste disposal fees becomes important in that special assessments per se are not regarded technically as taxes under Section 1, Article 11 of the Kansas Constitution and Chapter 427, Laws of 1974. *State, ex rel v. State Highway Commission*, 130 Kan. 456, 286 Pac. 244; *Palmer v. Munro*, 123 Kan. 387, 255 Pac. 67; and, *Hines and others v. City of Leavenworth and others*, 3 Kan. 186. The Kansas Supreme Court concluded in *State Highway Commission v. City of Topeka*, 193 Kan. 335, 393 P.2d 1008:

" . . . Article 11, Section 1 of our Constitution has no application to special assessments, and that an exemption of property of the state, county and municipalities from 'taxation' does not carry an exemption from special assessments for public improvements. Running through our decisions is the holding that public property is liable for special assessments for public improvements and this can only be overcome by a positive declaration in the statutes that the public property shall not be liable therefor but that the costs will be borne by the city at large."
(p. 339).

We find no specific provision within the solid waste disposal act which specifically exempts public property from the user fees. Accordingly, it is the opinion of this office that the Kansas Military Board must pay the solid waste disposal fee charged against the Atchison National Guard Armory.

Yours very truly,



VERN MILLER
Attorney General

VM:JPS:tp
cc: Frank Theis
Larry Mears
Harley A. Krull