



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 6, 1975

Opinion No. 75- 205

Mr. Matthew J. Dowd
Shawnee County Counselor
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Counselor Dowd:

You enclose a photocopy of Resolution H.R. 75-3, adopted February 11, 1975, by the Board of County Commissioners of Shawnee County, prescribing the powers, duties and responsibilities of the Shawnee County Solid Waste Authority, theretofore created by the Board.

The Authority is given the power to enter into contracts, lease and purchase agreements, and the power to fix and collect fees for services rendered by it, and authority to pay all legal obligations incurred in its operations. Under paragraph 5, the Authority is required to submit an annual budget to the Board for its operational and administrative expenses, and may employ legal engineering, technical, clerical and secretarial assistance with prior approval of the Commission, and after the Commission has established a budget therefor.

Paragraphs 3 and 4, which give rise to the questions you pose, provide thus:

"3. The Authority shall have the power which would otherwise be vested in the Board of County Commissioners pursuant to K.S.A. 65-3410 to provide for the storage, collection, transportation, processing and disposal of solid wastes generated within the boundaries of Shawnee County, Kansas, and shall have the to purchase all necessary equipment, acquire all necessary land, build any necessary buildings, incinerators, transfer stations, or other

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structures, lease or otherwise acquire the right to use the land or equipment and do all other things necessary for a proper and effective Solid Waste Management System including the levying of fees and charges upon the persons receiving services.

"4. The Board of County Commissioners shall reserve to itself the power to appoint and remove, with or without cause, the Authority Board members, the power to hire and fire the Authority Manager, and the powers specifically granted to the County Commission by K.S.A. 65-3410, regarding the compilation, publishing and collection of delinquent refuse fee charges, and the power to levy and collect taxes for the support of the Authority."

The resolution is styled as a home rule resolution, but it is not titled as nor in the form required of charter resolutions. It is not, thus, one which purports to exempt the county from any act of the legislature, but merely to provide authority which is otherwise lacking in state law, and which authority is not contrary to any act of the legislature. K.S.A. 19-101a(b) authorizes such resolutions:

"If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper." [Emphasis supplied.]

Clearly, in the exercise of its powers of local self-government, the board of county commissioners may create such administrative agencies, departments, authorities and the like as it deems necessary to act for the board in the discharge of its statutory authority and responsibilities. Any agency thus created is precisely that, an agent of the board, constituted and empowered

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to exercise such authority as the board of county commissioners, the principal, may delegate to it. Under section 3, the Solid Waste Management Authority is not constituted and empowered to act merely as an agent of the Board, exercising authority delegated to it by the Board and acting for the Board; rather, section 3 purports to effect an absolute transfer of power from the Board to the Authority, with the result that in exercising the authority thus transferred, the Board no longer acts as the agent of the Board, but as a semi-autonomous entity. Certainly, it was not the intent of the Board to avoid or surrender authority vested in it by law. Indeed, the Authority was doubtless created to provide an administrative mechanism to promote the more efficient and expeditious exercise of county responsibilities for the management of solid waste. However, section 3 purports to effect an absolute transfer, rather than merely a delegation, of powers to an entity created by the board. Thus, it states that the "Authority shall have the power which would otherwise be vested in the Board. . . ." [Emphasis supplied.] It is a doubtless unintended irony that in this instance, statutory powers of self-government have been exercised not to augment the statutory powers of the board, but to diminish its powers, in legal contemplation, vesting certain of its statutory powers in another body.

The Board, of course, retains authority to appoint and remove members of the Authority. However, the Board retains no control over the exercise of powers which are transferred to and vested in the Authority. This, in our judgment, is an impermissible assignment and transfer of authority.

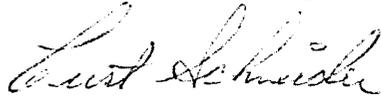
K.S.A. 65-3410 is a statute, and part of an enactment, which is of uniform application to all counties. K.S.A. 65-3405 of the 1970 solid waste enactment requires all counties to adopt and implement approved solid waste management plans. K.S.A. 65-3410 is the correlative grant of powers and authority, the exercise of which is necessary to enable the county to perform the duties imposed on it by K.S.A. 65-3405. Just as the county may not, in the exercise of county home rule powers, exempt itself from the requirements that it adopt and implement a solid waste management plan, similarly, it may not exempt itself from the statutes which confer on it the necessary powers and authority to do so by transferring those powers and authority to another body and relieving itself of any power over the exercise of that authority.

You advise that a further question has arisen, whether the Board has the power under K.S.A. 19-101a or otherwise to levy and collect

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a tax to fund the operations of the Solid Waste Authority. I enclose a copy of an opinion of Attorney General Vern Miller, to Mr. Dan Young, Douglas County county counselor, no. 74-303, which discusses the authority of counties under K.S.A. 19-101a to levy taxes for which no other statutory authority is provided.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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Enclosure