



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

June 7, 1976

ATTORNEY GENERAL OPINION NO. 76- 164

Mr. Robert W. Manske  
Woodson County Attorney  
Post Office Box 100  
Yates Center, Kansas 66783

Re: Counties--Solid Waste--Cities

Synopsis: A county which implements a county solid waste management plan on a county-wide basis must provide the services rendered thereunder within all cities which have not made timely elections to exempt themselves from the county plan. There is no statutory basis upon which the governing body of the city may be compelled to take legislative or administrative steps to meet any contractual obligation incurred by the county in its implementation of the county plan.

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Dear Mr. Manske:

You advise that in the implementation of the Woodson County solid waste plan, questions have arisen concerning the rights and responsibilities of the cities in the county, none of which have elected to be excepted from the county plan, to the county as it enters into contractual obligations for solid waste disposal services.

You inquire whether absent the written consent and agreement of a city, the county may award a contract for the disposal of solid waste from the entire county, including any such city, and whether, if so, the city is compelled to accept the provisions made for them under any such contract. Similarly, the question is raised concerning the rights of the county in the instance in which the county has approved a contract providing for solid waste disposal

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on a county-wide basis, and one or more of the cities in the county refuse to participate in the contract or its implementation. Further, you ask whether the county may execute a contract, in the implementation of the county-wide plan, and exempt therefrom those cities which refuse to participate with the county in the contract and plan it is designed to implement.

K.S.A. 65-3405(a) provides in pertinent part thus:

"On or before June 30, 1974, each county with a population of less than fifteen thousand (15,000) and each city located therein which elects pursuant to subsection (b) of this section to exclude such city from the county plan shall submit to the department a workable plan for the management of solid waste in such county or city."

Subsection (b) states the scope of the plan thus adopted:

"The solid waste management plan submitted by each county shall provide for a solid waste management system plan to serve the residents of all townships and cities within the county or counties except for those cities which elect to be excluded from the county plan by resolution adopted by the city governing body thereon . . . ."

If a city elects not to adopt a separate plan, it is subject to the county plan. However, the act provides no basis upon which the governing body of a city may be compelled to exercise its own legislative powers to assist in the implementation of the county plan.

The act contemplates, obviously a joint and cooperative effort by counties and cities to work toward the stated goals of the act. A city is statutorily free to elect to develop and implement its own plan. If it does not do so, however, responsibility for the adoption and implementation of the county-wide solid waste management system rests with the county itself. If a city does not elect to adopt a separate plan, it may reasonably be expected to join with the county in a good-faith effort to assist toward the goal of desirable, adequate and uniform solid waste practices throughout

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the county. If the city chooses not to cooperate, however, it rests with the county alone to implement the plan in its entirety.

The residents of a city are required to comply with all resolutions, rules and regulations adopted by the county governing body in the implementation of its county plan. The governing body of the city, however, has no statutorily enforceable duty to take either legislative or administrative action to assist the county in the performance of any contractual obligations the county may have incurred in the implementation of its own county plan. Obviously, in the great majority of Kansas counties, cities and towns have cooperated broadly with counties, for the benefit of the residents of the cities and county alike. If the city governing body does not choose to exercise its legislative or administrative powers in aid of the county plan, however, I find no statutory basis upon which it may be compelled to do so. In short, the county may not compel the governing body of any city to take legislative or administrative action to meet any contractual obligation incurred by the county in the implementation of the county plan.

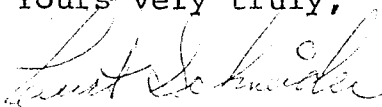
If, for example, implementation of the county plan required adoption of a prohibition against open burning, the county may in the exercise of its police powers adopt a resolution prohibiting such open burning, and provide appropriate penalties therefor. The resolution thus enacted would apply to all residents of the county, whether residing within or without the corporate boundaries of any city. However, there is no statutory basis upon which a city may be compelled to adopt an ordinance prohibiting open burning, in aid, as it were, of the county plan.

Similarly, if, for example, the county were to execute a contract providing that collection charges would be collected from residents of the various cities by the city clerk of each city, there exists no basis upon which the county may compel the city governing body of any such city to take legislative or administrative action to authorize the city clerk to undertake such collection in aid of the county.

If a city governing body is thus uncooperative, there is no basis upon which the county may exempt that city from coverage under a collection contract which it executes in implementation of the county plan. The county remains statutorily obligated to provide service throughout the county and every city which has not made a timely election to adopt its own plan.

Essentially, the same observations apply to the various state and federal agencies which have facilities or installations in Woodson County.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General