



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 6, 1976

ATTORNEY GENERAL OPINION NO. 76-205

Ms. Bonnie Parcel
Comanche County Clerk
Coldwater, Kansas

Re: Counties--Solid Waste--Charges

Synopsis: There is no precedent or authority for the assessment of delinquent county solid waste collection charges against personal property, and collection of such delinquent charges in the manner of unpaid personal property taxes. The county may lawfully make violation of its solid waste resolutions, rules and regulations a misdemeanor, and prescribe a penalty therefor. A late charge to be added to such service charges is not clearly prohibited by Kansas law, and has been upheld for various utilities by the Kansas Corporation Commission; accordingly, a similar late charge to be assessed by the county is permissible.

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Dear Ms. Parcel:

On behalf of the board of county commissioners of Comanche County, and in the absence of the county attorney, you request an opinion concerning certain portions of the county resolution establishing standards and regulations for refuse disposal in Comanche County.

First, you inquire concerning section 6 of the resolution, which states thus:

"Any and all accounts found to be delinquent at tax notice time shall have delinquent fees with accumulated penalties added to the

Ms. Bonnie Parcel

Page Two

July 6, 1976

personal property tax, becoming due and payable with the regular tax subject to added applicable penalties."

Under K.S.A. 1975 Supp. 65-3410, the board of county commissioners may establish a schedule of fees to be imposed on real property within any county solid waste service area:

"In establishing the schedule of fees, the board of county commissioners 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."

The board "shall impose the appropriate fee upon each division of land and provide for the billing and collection of such fees." Delinquent fees shall constitute assessments against the respective parcels of land, and are a lien against such property for the amount of the uncollected fees. The fees thus assessed are collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected.

The resolution described above provides for the addition of delinquent accounts to personal property taxes, rather than real property. Under the statutory procedure, the fees are fixed according to the use of the property, volume of waste generated from its use, and any other factors which reasonably relate the waste disposal fee to the property involved. It is imposed upon the land rather than as a personal liability of the land owner. Although not a tax, it is at least a charge in the nature of a special assessment, as contemplated by the statute, according to the benefit accruing to the property from the service, measured in part by the use of the property, the waste generated therefrom, and other pertinent factors. There exists, thus, some colorable justification for assessment of delinquent charges against the real property, and collection of such sums in the manner as delinquent ad valorem property taxes. There is no similar apparent basis for assessment of collection service charges and collection of delinquent accounts in the manner as personal property taxes. The delinquent accounts do not, under the resolution, become liens against the personal property, and indeed, there is no basis under the resolution for assessing such charges against personal property. Under the statute, the assessment of such charges against

real property is arguably justified by the requirement that the charges be fixed in amounts relating to the benefits derived by and burdens of solid waste resulting from such real property. Obviously, there is no comparable basis for assessing delinquent charges as liens against personal property, which is entirely unrelated to the basis upon which the charges are fixed.

I know of no precedent or authority whatever for the assessment of delinquent solid waste collection charges as charges against personal property and the collection of such sums in the same manner as delinquent personal property taxes. As a result, I cannot approve or support this particular section of the resolution, insofar as it purports to authorize the assessment of delinquent solid waste collection charges upon *personal* property.


Secondly, you inquire concerning section 9 of the resolution, which states thus:

"Any person violating any provision of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$300.00 or imprisonment in the county jail not to exceed 90 days. Each day that the violation continues to exist shall constitute a separate offense."

This provision is fully within the police power of the county.

Lastly, you inquire concerning the legality of a proposed penalty of fifty cents to be added to the solid waste service charge when such charge is unpaid after the fifteenth of each month. In proceedings before the Kansas Corporation Commission, this office has challenged the legality of such charges when imposed by utility companies as so-called late charges upon unpaid utility bills, asserting that the charge constitutes usury, representing an interest rate far in excess of that permitted by law. The Corporation Commission rejected this contention, and upheld these charges. Its order was affirmed on appeal to the Sedgwick County District Court. While we continue to question the legality of such charges, in the face of this decision, we have little basis upon which to advise you that the proposed penalty is clearly unlawful. Accordingly, at the present time, unless and until we obtain a definitive ruling from a court of competent jurisdiction regarding such charges, we cannot but approve this charge as proposed.

Yours very truly,


CURT T. SCHNEIDER
Attorney General