



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

December 3, 1976

ATTORNEY GENERAL OPINION NO. 76-354

Mr. Perry Warren
Sherman County Attorney
Sherman County Courthouse
Goodland, Kansas 67735

Re: Counties--Funds--Transfer and Use of

Synopsis: A proposed contract for purchase of solid waste equipment which creates no actionable indebtedness against the county does not violate the cash-basis law. Solid waste service charges assessed under K.S.A. 1975 Supp. 65-3410 do not constitute ad valorem taxes which are subject to the aggregate limitations of K.S.A. 1975 Supp. 79-5001 *et seq.*

* * *

Dear Mr. Warren:

Enclosed for our review with your letter of October 29, 1976, are documents, consisting of three offers for purchase of a land fill compactor by Sherman County. You inquire as to our opinion on the use of special contractual provisions with respect to the Kansas Cash Basis Law, specifically K.S.A. 10-1101 *et seq.*

As clarified by telephone conversation, these special provisions consist of a rental plan whereby Sherman County would trade in the existing compactor and make three (3) annual payments, at the completion of which title to the new compactor would pass to Sherman County. The agreement further provides that in the event of failure on the part of Sherman County to make a required rental payment when it becomes due or within a reasonable time thereafter, the exclusive remedy of the vendor would be to enter and remove the compactor from county premises and to retain all sums previously remitted by Sherman County.

Mr. Perry Warren
Page Two
December 3, 1976

Under K.S.A. 10-1113, the city may not create any "indebtedness in excess of its amount of funds actually on hand in the treasury of such municipality at the time for such purpose" In the offer under consideration, Sherman County would incur no contractual obligation to make any of the rental payments and failure to do so would not subject the county to any action for breach of contract or liability for liquidated damages. In short under such an agreement there is actually no indebtedness incurred by Sherman County as contemplated by K.S.A. 10-1113.

This type of offer conforms substantially to the contract discussed in the opinion issued by this office to Mr. John Dekker, Director of Law, Wichita, Kansas, dated April 28, 1976, and enclosed for your review. Your attention is specifically directed to paragraphs III, IV, and VI of the City of Wichita agreement. We continue to adhere to that opinion and accordingly it is our opinion that the type of offers as discussed *supra* would not be in violation of the Kansas cash basis law, K.S.A. 10-1101 *et seq.*

In addition you inquire whether an increase in the annual fee levy authorized under K.S.A. 65-3410 would be controlled by K.S.A. 79-5001 *et seq.*

Under K.S.A. 65-3410 the county is given the authority to underwrite the cost of providing for the collection and disposal of solid waste by ". . . the levying of fees and charges upon persons receiving service." These fees are assessed for services rendered within the county solid waste service area, and are not ad valorem taxes. Thus, such fees do not constitute a tax as contemplated by K.S.A. 79-5002 (b) which states in pertinent part thus:

"The phrase 'taxes levied by the base year' shall refer to taxes, other than special assessments and excluding levies specified in section 11 [79-5011] of this act"

It necessarily follows that the fees as described in K.S.A. 65-3410 do not come under the Kansas aggregate tax levy limitations as set out in K.S.A. 79-5001 *et seq.* thus would not limit the fee adjustment being considered by the Sherman County Commissioners.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:JBW:kj