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April 9, 1981

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ATTORNEY GENERAL OPINION NO. 81-84

Mr. Jack Shelton  
Attorney and Special Assistant  
Department of Health and Environment  
Building 740, Forbes Field  
Topeka, Kansas 66620

Re: Public Health--Solid and Hazardous Waste--Power  
of Counties to Regulate Matters Concerning Solid  
Waste

Synopsis: A board of county commissioners, by resolution, may establish standards and regulations concerning solid waste management that apply uniformly within the corporate limits of those cities in the county which did not elect, within the statutorily prescribed time, to be excluded from the county solid waste management plan. However, such standards or regulations would not be applicable within the jurisdiction of those cities that had so elected to develop their own solid waste management plan and be excluded from the county plan.

The standards or regulations prescribed by a county concerning solid waste management would be enforceable in the same manner as any other regulation promulgated by a board of county commissioners. Cited herein:  
K.S.A. 65-3405, 65-3410.

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Dear Mr. Shelton:

On behalf of Melville W. Gray, Deputy Director of the Division of Environment of the Department of Health and Environment, you

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seek our opinion on two questions concerning the power of counties to regulate matters regarding solid waste. Specifically, Mr. Gray asks:

- "1. Can a county, by resolution, establish and enforce solid waste standards and regulations which apply uniformly within corporate limits of cities in the county without the expressed consent of those cities?"
- "2. If the county can establish such regulations, what legal and administrative procedures are available to enforce the provisions of those regulations?"

Before responding to these specific questions, it is to be noted that the legislature, pursuant to K.S.A. 65-3405, required all counties within the state to submit, on or before June 30, 1974, a workable plan for the management of solid waste. At the same time, the legislature provided that each city could elect to be excluded from the county plan and submit a separate plan for solid waste management. However, any such city plan was required to be submitted "on or before June 30, 1974." K.S.A. 65-3405. In our opinion, failure on the part of a city to submit a plan by the date prescribed in 65-3405 rendered the city subject to the county solid waste management plan. This conclusion is predicated on the following language of K.S.A. 65-3405:

"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 thereof: Provided, That the county plan shall take reasonable cognizance of separately prepared plans developed by cities within such county." (Emphasis added.)

With the foregoing background established, we now turn to your inquiries. Your first question concerns whether a board of county commissioners may establish, by resolution, solid waste standards and regulations which apply uniformly within the corporate limits of cities in the county, without the expressed consent of those cities.

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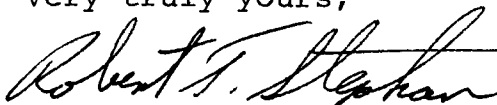
Subsection (b) of K.S.A. 65-3410 specifically authorizes counties to adopt resolutions, regulations and standards for the storage, collection, transportation, processing and disposal of solid wastes, so long as said resolutions, regulations and standards are in conformity with the rules, regulations, standards and procedures adopted by the secretary of health and environment.

We note that the above-referenced provision also authorizes cities to adopt ordinances, regulations and standards, conforming to those of the secretary, but, consistent with the discussion hereinabove relating to the election of cities to exclude themselves from the county plan, we believe such authority extends only to those cities which excluded themselves from the county plan.

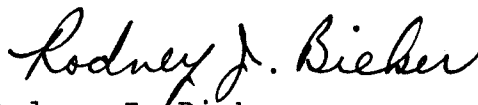
Thus, in response to your first inquiry, it is our opinion, based upon the provisions of K.S.A. 65-3405 and 65-3410, a board of county commissioners may, by resolution, establish solid waste standards and regulations that apply uniformly within the corporate limits of those cities in the county which did not elect to be excluded from the county solid waste management plan. However, such standards and regulations would not be applicable within the jurisdiction of those cities that developed their own solid waste management plan, in accordance with K.S.A. 65-3405.

As to your second question, if a county established standards and regulations concerning solid waste management, the county might include a provision in its resolution establishing a penalty or penalties for violation of such standards or regulations. Whether the penalty or penalties prescribed are reasonable and comport with constitutional safeguards would be a question for the courts, if an alleged violator challenged his liability thereunder. See, for example, Zerr v. Tilton, 224 Kan. 394 (1978); Donnelly v. City of Eureka, Kansas, 399 F.Supp. 64 (D.Kan. 1975); and Uhl v. Ness City, Kansas, 590 F.2d 839 (10th Cir. 1979). But, in response to your specific inquiry, it is our opinion that regulations prescribed by a county commission concerning solid waste management would be enforceable in the same manner as any other regulation promulgated by such a commission.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm