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ATTORNEY GENERAL OPINION NO. 81-273

Neil R. Shortlidge
First Assistant City Attorney
City of Overland Park
City Hall, 8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities and Municipalities--Miscellaneous Provisions--
Abatement of Nuisances; Assessment of Costs

Synopsis: Pursuant to the provisions of certain statutes where-
by cities may undertake work on private property
and assess the cost thereof against the property,
a city may assess only actual costs incurred by the
city. A city may not, under said statutes, assess
a purely arbitrary amount which purports to represent
administrative and publication costs incurred by
the city. However, where a city may demonstrably
measure the administrative costs and publication
costs attributable to a specific work project,
said costs may be assessed against the property.
Cited herein: K.S.A. 12-1617e, 12-1617f, 12-1755,
17-4759; L. 1981, Ch. 173, §54.

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Dear Mr. Shortlidge:

You request our opinion concerning various statutes which authorize cities to undertake certain work on privately-owned real property and assess the cost or costs thereof against the owner or owners of the real estate. The specific statutes you refer to are K.S.A. 12-1617e (relating to "any and all nuisances"), 12-1617f (relating to "the cutting or destruction of all noxious weeds"),

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K.S.A. 12-1755 (relating to the "removal of unsafe and dangerous structures"), and K.S.A. 17-4759, as amended by L. 1981, ch. 173, §54 (relating to the "repair, closing, demolition or removal" of structures which are "unfit for human use or habitation"). Your question is whether, under these statutes, the city of Overland Park may only assess the actual cost of the work undertaken, or whether the city may also include publication costs (where notices are required to be published) and administrative costs.

While we are unaware of any Kansas case which addresses the question you have raised in relation to the above referenced statutes, the case of Dodson v. City of Ulysses, 219 Kan. 418 (1976), considers the identical question in relation to the assessment of costs of a project under the general paving law. In that case, the Kansas Supreme Court stated as follows concerning the procedure employed by the city in determining the amounts to be levied:

"First, it appears that in determining the 'cost' of the improvement to be assessed the engineer took the construction cost and added 20% to cover 'legal publication, interest on temporary notes.' Presumably the 20% also covers professional fees. So far as the record is concerned the 20% is a purely arbitrary figure, bearing no known relationship to actual costs. The statutes make no provision for such an unsubstantiated estimate; 12-601, 12-602 and 12-608 each speak of the 'cost' of the improvement, which we take to mean the actual cost as nearly as can practicably be calculated. K.S.A. 12-6a01 (d) defines 'cost' under the general improvement law as costs 'necessarily incurred,' plus an overhead charge for services rendered by regular city employees not to exceed 5%. K.S.A. 15-709, applicable to third class cities, authorizes adding to construction costs the 'actual cost' of a number of incidental expenses, not to exceed 20% of the contract price. Neither is applicable here, the first because the improvement was not made under the statute and the second because Ulysses is a city of the second class. To be sure, the actual cost of improving Maize street would include an aliquot share of expenses attributable to a number of projects

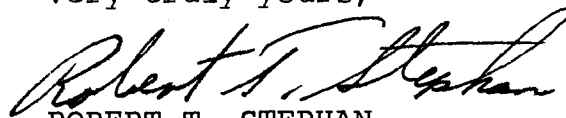
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which were lumped together for convenience of administration, but we know of no authority for picking 20% or any other percentage out of the air." (Emphasis added.) Id. at 425, 426.

In accordance with the above-quoted authority, it is our opinion that the statutes in question must be construed to allow the recovery of only actual costs incurred by the city in completing the work undertaken. In this regard, we note that K.S.A. 17-4759(b)(6) (as amended) permits a municipality, which has undertaken work as authorized by said statute to recover the enforcing officer's costs and necessary attorney's fees.

In relation to all the statutes about which you have inquired, it is our conclusion that a city may not assess a purely arbitrary figure as representing administrative and publication costs. However, if through some accounting or record-keeping procedure, a city can calculate the administrative costs and publication costs attributable to a specific work project undertaken pursuant to the subject statutes, it is our judgment that, under those circumstances, said costs could be properly assessed against the property.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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RTS:BJS:TRH:jm