

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 59

Harold T. Walker  
City Attorney  
City of Kansas City, Kansas  
Ninth Floor, Municipal Office Building  
701 North Seventh Street  
Kansas City, Kansas 66101

Re: Personal and Real Property--Disposition of  
Unclaimed Property Act--Unclaimed Property Held by  
a Utility

Cities and Municipalities--Public Utilities; Any  
City--Deposits to Secure Payment of Bills;  
Abandoned Deposits, Disposition

Synopsis: A municipally owned utility which transfers  
unclaimed security deposits to its operating fund  
pursuant to K.S.A. 12-822 is not required to report  
and deliver such deposits to the state treasurer  
pursuant to the disposition of unclaimed property  
act. Cited herein: K.S.A. 12-822, 58-3901; K.S.A.  
1991 Supp. 58-3904; 58-3912; K.S.A. 58-3914; L.  
1978, ch. 59, § 1; L. 1979, ch. 173; L. 1989,  
ch. 48, § 65; L. 1989, ch. 170, §§ 4, 9.

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Dear Mr. Walker:

You request our opinion regarding a potential conflict between  
the provisions of K.S.A. 12-822 and K.S.A. 58-3901 et  
seq. Specifically, you question whether a municipally owned

owned utility which chooses to transfer unclaimed security deposits to its operating fund pursuant to K.S.A. 12-822 must still report and remit such unclaimed deposits to the state treasurer pursuant to K.S.A. 1991 Supp. 58-3912 and K.S.A. 58-3914.

K.S.A. 12-822 authorizes public and municipally owned utilities to receive security deposits from customers under certain specified conditions, and contains the following provision:

"Any amount of security deposit, and the accrued interest thereon remaining in the account of any customer of a municipally owned utility who has discontinued service with such utility shall be placed in the operating fund of such utility, upon the following conditions: (a) Such money has remained on deposit with the municipal utility for a period of more than three years from the date service was discontinued;

"(b) no demand for such money has been made at any time during the three-year period;

"(c) the whereabouts of the person to whose account the money is credited is unknown and a reasonable effort has been made to determine the same; and

"(d) following the expiration of the three-year period, the utility has published, once each week for two consecutive weeks in a newspaper of general circulation in the county in which the utility is located, a notice listing any person whose deposit remains on account, and that a demand for such money must be made within 60 days. Any security deposits remaining in the account of any such customer 60 days after the last publication of such notice shall be placed in the operating fund of such utility."  
(Emphasis added).

The quoted provision was enacted in 1978 and has not been significantly amended since that time. L. 1978, ch. 59, § 1.

K.S.A. 1991 Supp. 58-3912 and K.S.A. 58-3914, respectfully, require the holder of funds or other property that is presumed abandoned under the disposition of unclaimed property act (K.S.A. 58-3901 et seq.) to report the existence of and deliver such property to the state treasurer to be held in trust for the rightful owner. Pursuant to K.S.A. 1991 Supp. 58-3904:

"The following unclaimed property held or owing by any utility shall be presumed abandoned property:

"Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than five years after the termination of the services for which the deposit or advance payment was made."

"Utility" is defined at K.S.A. 58-3901(h) as "any person who owns or operates within this state for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas." "Person" is defined to include government or political subdivisions and "any other legal or commercial entity." K.S.A. 58-3901(g). Thus, security deposits of a municipally owned utility that remain unclaimed by the person appearing on the utility's records for more than five years would be subject to the provisions of the disposition of unclaimed property act.


The disposition of unclaimed property act was enacted in 1979, one year subsequent to enactment of the pertinent provisions of K.S.A. 12-822. L. 1979, ch. 173. K.S.A. 12-822, K.S.A. 1991 Supp. 58-3904 and 58-3912 have all been amended as recently as 1989. See L. 1989, ch. 48, § 65; L. 1989, ch. 170, §§ 4, 9.

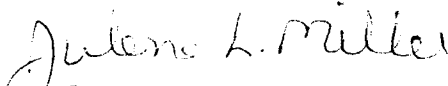
One rule of statutory construction provides that older statutes must be read in the light of, and must be harmonized

later legislative enactments and must be subordinated thereto if a conflict exists. State v. Keeley, 236 Kan. 555, 560 (1985). However, repeals by implication are not favored and a former act will not be held to have been repealed by implication unless the later enactment is so repugnant to provisions of the first that both cannot be given force and effect. Jenkins v. Newman Memorial County Hospital, 212 Kan. 92, 96 (1973). Further, it is the duty of the court to reconcile different statutory provisions so as to make them consistent, harmonious and sensible. In so doing, general and special statutes should be read together and harmonized whenever possible, but to the extent a conflict between them exists, the more specific statute will prevail unless it appears that the legislature intended to make the more general statute controlling. Kansas Racing Management, Inc. v. Kansas Racing Commission, 244 Kan. 343, 353 (1989). In Keely, supra, the rule preferring later enactments was subordinated to the rule preferring specific over general enactments.

While the disposition of unclaimed property act was enacted subsequent to K.S.A. 12-822, the pertinent provision of K.S.A. 12-822 is specific to municipally owned utilities; K.S.A. 1991 Supp. 58-3904 and the disposition of unclaimed property act apply generally to all utilities and other holders of unclaimed property. In order to harmonize the provisions, giving force and effect to all but deference to the more specific, we believe K.S.A. 12-822 must be read to give municipally owned utilities an alternative to the requirements of the disposition of unclaimed property act. Both contain essentially the same notice requirements before disposition of the security deposits: actual notice if possible; constructive notice for two consecutive weeks in a newspaper of general circulation if actual notice is not effective. Requiring the same notice procedures twice is not sensible. We believe the legislative intent was to allow municipally owned utilities to retain and use security deposits which are not claimed within the three years plus time allotted by K.S.A. 12-822. There is no expression of legislative intent in the disposition of unclaimed property act or its legislative history to make its general provisions controlling over the more specific provisions of K.S.A. 12-822.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General