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ATTORNEY GENERAL OPINION NO. 92-98

William I. Heydman
Kinsley City Attorney
P.O. Box 7
721 Marsh
Kinsley, Kansas 67547

Re: Cities and Municipalities -- Emergency Telephone
Services -- Cost Distribution

Synopsis: The residents of Edwards county and the city of Kinsley may not be taxed more than \$.75 per month per exchange access line for emergency telephone services. If an agreement between the city and the county cannot be reached so that services continue for the benefit of the county and the city, the county may refuse access to the city. However, such an action may constitute breach of contract. The city is authorized to established its own emergency telephone service. Cited herein: K.S.A. 12-5302(a); 65-6138.

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Dear Mr. Heydman:

As Kinsley city attorney, you have requested our opinion on the cost distribution of emergency communication services. Specifically, you ask whether Edwards county can refuse the city of Kinsley access to the emergency communication system if the Edwards county board of commissioners and the city of Kinsley cannot reach an agreement on the cost distribution of the emergency communication services.

As stated in K.S.A. 12-5302:

"In addition to other powers for the protection of the public health and welfare, a governing body may provide for the operation of an emergency telephone service and may pay for it by imposing an emergency telephone tax for such service in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The governing body may do such other acts as are expedient for the protection and preservation of the public health and welfare and are necessary for the operation of the emergency telephone system. The governing body is hereby authorized by ordinance in the case of cities and by resolution in the case of counties to impose such tax in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The amount of such tax shall not exceed \$.75 per month per exchange access line or its equivalent." (Emphasis added).

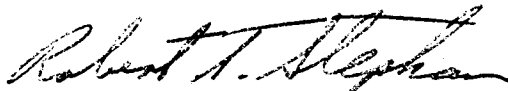
In Attorney General Opinion No. 92-36 we opined that "the clear intent of [K.S.A. 12-5302(a)] was to authorize both counties and cities to install and operate emergency telephone services, and impose a tax therefore, within their respective jurisdictions." Based on this, the residents of the city of Kinsley could be taxed in an amount not to exceed \$.75 per exchange access line or its equivalent per month. Furthermore, since Edwards county and the city of Kinsley jointly established an emergency communications system, the county cannot charge a fee to the residents of the city of Edwards since they are already being taxed by the city for such services. However, depending on the terms contained in the agreement which the city of Kinsley and Edwards county entered into in 1978, the city may have voluntarily agreed to pay more than what it now feels is its fair share.

The city may terminate its agreement with the county and contract for its own emergency communications services. Pursuant to K.S.A. 12-5302 and Attorney General Opinion No. 92-36, a city may enter into a contract for the implementation of an emergency telephone service. Furthermore, pursuant to

K.S.A. 65-6138, the emergency medical services board may enter into a contract with a city for the establishment of an emergency medical services communications system. Under these laws a city is authorized to enter into emergency communication services contracts regardless of the actions of a county.

In conclusion, the residents of Edwards county and the city of Kinsley may not be taxed more than \$.75 per month per exchange access line for emergency telephone services. If an agreement between the city and the county cannot be reached so that services continue for the benefit of the county and the city, the county may refuse access to the city. However, such an action may constitute breach of contract. The city is authorized to established its own emergency telephone service.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

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