STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

September 5, 1974

Opinion No. 74- 308

Mr. Stan Morgan
City Attorney
Oberlin, Kansas 67749

Dear Mr. Morgan:

You enclose a copy of an ordinance published June 13, 1974, in the *Oberlin Herald*, providing for the collection and disposition of garbage and refuse. Section 19 provides thus:

> "Charges to be on Water or Utility Bill. All bills for sanitary (refuse) service charges shall be included on water or utility bills and no payment shall be accepted by the Water Department, except for the full amount billed for all services, and delinquent refuse bill shall carry the due dates, grace periods and penalties as water bills."

Thus, one who does not pay the charge for refuse collection service faces loss of water service. You advise that one individual refuses to pay the garbage collection fee. Basically, the question you pose is whether an individual may be required to pay for a trash service if he has a pickup and hauls his own trash to a proper location.

K.S.A. 12-2106 states thus:

> "Parties having no garbage or trash shall not be required to pay any service charge: *Provided*, The governing body may pass ordinances prohibiting the accumulation of garbage and trash other than as specified to the end that the city may be kept clean and sanitary, and may prohibit the owners of garbage and trash from transporting it along the streets and disposing of it in a manner causing a nuisance or in unsightly or insanitary ways."

The number of persons whose living habits are so austere that they produce no garbage or refuse must be small, indeed. In fact, the number of such persons, if there are any, is surely too small to be worthy of statutory notice. The "[p]arties having no garbage or trash" to whom this provision applies presumably includes those who have no trash or garbage to

collect, because they have otherwise disposed of it, by the various alternative means available. In short, the provision conclusively establishes that the service charge collected for collection of garbage and refuse is precisely that, a charge for service offered and performed, and may not be assessed against those not using the service, such as those who have otherwise disposed of their garbage and refuse.

There remains the question, however, whether in its implementation of a solid waste management plan adopted pursuant to K.S.A. 65-3401 et seq., a city may require that all persons use the collection service provided by the city or its contractor and thus, that all residents pay the charge fixed for such service. In our opinion, it may do so.

Respecting the police power of the city in the matter of sanitation, the court stated in *O'Neal v. Harrison*, 96 Kan. 339 (1915) thus:

> "The power....to adopt and enforce sanitary regulations is almost as broad as that of the state. It is conceded that the city may regulate the disposition of garbage, and impose rigorous rules as to the time and manner in which it shall be moved.... But it is argued that any one has a right, of which he cannot lawfully be deprived, to haul it through the streets, so long as he conforms to the prescribed regulations--that the conferring of a monopoly in that respect is not necessary to enforce them, that it sustains no relation to their enforcement, and is not reasonably adapted to promote that end. But manifestly obedience to the rules laid down for the handling of garbage may be more easily compelled--the method adopted may be made more efficient--if it is all handled by one concern....The reasonableness of the course pursued, in view of all the circumstances and the degree of inconvenience resulting to individuals, may be taken into account. But where as in this case the matter is one of great public importance, which the legislature has entrusted to the action of local authorities--no doubt wisely, because of the differences of local conditions--the action of the city commission becomes entitled to consideration almost equal to that accorded to a statute, and should not be interfered with except upon grounds the force of which is reasonably free from doubt. We conclude that authority and reason alike

require the upholding of the present ordinance." 96 Kan. at 342-343.

See also *Kirksey v. City of Wichita*, 103 Kan. 761 (1918).

If, as is settled, the city may regulate the hauling of refuse through its streets by private parties on a commercial basis, and prohibit this activity to all parties save one who is given the exclusive right to do so, it is surely within the same police power to regulate the disposition of refuse by private persons, and to require all persons to use a municipally-designated service. The city may reasonably find that in the interest of sanitation, the practice of private citizens hauling their own refuse results in problems which justify a total prohibition of that practice. K.S.A. 12-2105 empowers the city to prohibit the owners of trash and garbage from transporting it along the streets in a manner so as to cause a nuisance, or in an unsightly or unsanitary manner. Such regulations, as those requiring refuse to be secured and covered during transport so as not to be blown about or fall to the ground, are frequently found difficult to enforce.

Upon the basis of such considerations, it is, in our opinion, reasonably within the police power of the city to require that all residents dispose of their refuse through a service provided by the city or its contractor, and to prohibit residents from disposing of their refuse otherwise, including the use of personal means of conveyance for transporting domestic refuse through the city streets.

Yours very truly,

Vern Miller

VERN MILLER
Attorney General

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