



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 20, 1975

ATTORNEY GENERAL OPINION NO. 75- 396

Mr. Douglas G. Waters
City Attorney of Basehor
818 North 7th Street
Leavenworth, Kansas 66048

Re: Cities--Ordinances--Initiatory Petitions

Synopsis: A proposed ordinance sought to be submitted to an election pursuant to K.S.A. 12-3013 which impairs existing contractual obligations of the city incurred under prior ordinances, and which implements and executes legislative policies and purposes which are enunciated by the state legislature, is not eligible for submission to the voters under K.S.A. 12-3013.

* * *

Dear Mr. Waters:

You inquire whether a proposed ordinance which is drafted to repeal Ordinance Nos. 94 and 96 of the City of Basehor is legislative in nature, or whether it is an "administrative ordinance" which under K.S.A. 12-3013 is not subject to the initiative and referendum procedure provided by that statute.

Ordinance No. 94 was passed on June 4, 1974, providing for the municipal collection of garbage and refuse. Section 2 states in pertinent part thus:

"Collection of Refuse and Garbage by City. All refuse and garbage accumulated within the City of Basehor, Kansas, shall be collected, conveyed and disposed of by the city or by the employees of said

Mr. Douglas G. Waters

Page Two

October 20, 1975

of said city or by contractors specifically authorized to collect and dispose of refuse and garbage or by persons authorized to dispose of their own refuse and garbage"

Section 3 stated in pertinent part thus:

"Contracts. The governing body of the City of Basehor, Kansas shall have the right to enter into a contract with any responsible person for collection and disposal of refuse and garbage providing that said contractors shall collect and dispose of all refuse within the City of Basehor, Kansas"

Sections 4, 5 and 6 deal with the storage, wrapping and accumulation of refuse and garbage. Section 7 prohibits burying of refuse and garbage within the city, while section 8 prohibits burning except in approved incinerators. Section 9 specifies that the ownership of refuse material when placed in containers shall be vested in the city and subject to the exclusive control of the city, its employees and contractors. Section 10 prohibits hauling of any garbage, refuse or other waste material of any kind of any dumping place or site within or without the corporate limits of the city unless the site is approved as provided therein. Section 14 provides in pertinent part for the collection of garbage and refuse as follows:

"The City of Basehor, Kansas or its authorized contractor, shall collect from the residential areas of the city not less than weekly as directed by the City Sanitation Officer, all garbage and refuse; provided, that it shall be the duty of any person in possession or control of any premises to place the storage containers required in Section 4 in a convenient location for collection, as designated by the city and the contractor"

Section 17 provides for charges for the service provided under the ordinance:

"Charges for Collection and Disposal.
The City of Basehor, Kansas in providing the service of collecting and disposing of all refuse accumulated within the city . . . shall establish and collect a service charge to defray the cost and maintenance of service and to pay any person contracting with the city for the collection and disposal of garbage and refuse, the fees and charges provided by the contract for the collection and disposal thereof."

Under section 18, in order to "assist in maintaining the general sanitation of the City of Basehor, Kansas, it shall be the duty of every person occupying or having control of the occupancy of any premises on a regularly established garbage and refuse route to . . . request, accept and use the garbage and refuse pickup and collection service" Ordinance No. 96 amended the monthly charge to be \$3.20, and provided that any delinquent and unpaid charges and assessments shall be certified to the county clerk to be placed on the tax rolls for collection. Pursuant to these ordinances, on December 18, 1974, the City of Basehor entered into a contract with Solid Waste Disposal, Inc., to begin a solid waste collection program.

The proposed ordinance which is required to be adopted or submitted to the voters at an initiative election provides for repeal of Ordinance Nos. 94 and 96. Section 2 thereof states thus:

"The City Council of the City of Basehor, Kansas, may contract with a qualified person to provide refuse service to the owners or the occupants of residences within Basehor, Kansas, who request such service. Provided, nothing in this ordinance shall prevent the legal hauling and disposal of garbage and refuse by a private refuse service or the owner or occupant of said residences."

Section 2.1 permits the city to agree to bill and collect for refuse service actually provided, but provides that only those actually requesting and receiving the service shall be liable for such charges and assessments.

The question presented, then, is whether Ordinance Nos. 94 and 96 are subject to repeal by the proposed ordinance under the initiative procedure set forth in K.S.A. 12-3013. These ordinances

Mr. Douglas G. Waters
Page Four
October 20, 1975

were enacted by the city in the discharge of its duties under K.S.A. 65-3401 *et seq.* The legislative findings and policy underlying that act are set forth in K.S.A. 1974 Supp. 65-4301:

"It is hereby declared that protection of the health and welfare of the citizens of Kansas requires the safe and sanitary disposal of solid wastes. The legislature finds that the lack of adequate state regulations and control of solid waste and solid waste management systems has resulted in undesirable and inadequate solid waste management practices that are detrimental to the health of the citizens of the state; degrade the quality of the environment; and cause economic loss."

The duty of the city is set forth in K.S.A. 1974 Supp. 65-3405(a):

"On or before June 30, 1974, each county with a population in excess of thirty thousand (30,000) and each city located therein which elects pursuant to subsection (b) of this section to exclude such city from the county plan shall submit to the secretary a workable plan for the management of solid waste within such county or city. . . . *Provided*, That within two (2) years from such date, any such program shall meet all the requirements of this act for a local solid waste control program."

The term "solid waste management system," for which the county or city must adopt and implement a plan, is defined at K.S.A. 1974 Supp. 65-3402(b) thus:

"'Solid waste management system' means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or any city, authority, county or any combination thereof."

K.S.A. 1974 Supp. 65-3405(c)(1-7) sets forth the requirements which each local plan shall meet.

Mr. Douglas G. Waters
Page Five
October 20, 1975

K.S.A. 12-3013 commences thus:

"A proposed ordinance, *except an administrative ordinance . . .* may be submitted to the governing body of any city accompanied by a petition"
[Emphasis supplied.]

"It is well settled that under the statute only legislative questions can be referred to a vote of the people." *State ex rel. Boynton v. Charles*, 136 Kan. 875 at 877, 18 P.2d 149 (1933). The criteria for distinguishing legislative and administrative ordinances was discussed in *State ex rel. Frank v. Salome*, 167 Kan. 766, 208 P.2d 198 (1949), wherein the court quoted with approval from 43 C.J. 585 as follows:

"'Actions which relate to subjects of a permanent or general character are considered to be legislative, while those which are temporary in operation and effect are not. Acts constituting a declaration of public purpose, and making provisions for ways and means of its accomplishment, may be generally classified as calling for the exercise of legislative power. Acts which are to be deemed as acts of administration, and classed among those governmental powers properly assigned to the executive department, are those which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body, or such as are devolved upon it by the organic law of its existence.'"
[Emphasis supplied.]

Ordinances numbered 94 and 96 are not declarations of legislative policy. That policy was set forth by the Kansas Legislature in the 1970 act, K.S.A. 65-3401 *et seq.*, as amended. Thereunder, it is the affirmative duty of each city which elects to be excluded from the county solid waste management plan to develop and implement its own plan, which is subject to the approval of the Kansas Secretary of Health and Environment. The City of Basehor elected not to be part of the county plan, and thus became obligated by virtue of state law to develop and implement a municipal plan for solid waste management. Ordinances numbered

94 and 96 prescribe how that responsibility shall be implemented. These ordinances merely implement and execute legislative policies and purposes set forth in the state Solid Waste Management Plan of 1970, and contain no independent legislative findings or purposes. Those findings and purposes have already been enunciated by the state legislature, leaving to the cities only the manner of their implementation. These ordinances which have been adopted by the city prescribe the manner in which the city shall implement and discharge its clear responsibility as mandated by the Kansas Legislature, and cannot in my judgment be characterized as legislative. Having elected to be excluded from the county plan, the plan adopted by the city must be approved by the Secretary of the Kansas Department of Health and Environment. The proposed ordinance gives the city no tools whatever by which it can implement the solid waste management plan approved by the Secretary. Indeed, the proposed ordinance, if enacted, would leave the city helpless to meet its statutory obligations to implement its solid waste management plan. In such circumstances, the ordinances proposed to be repealed cannot be regarded in any fashion as legislative, and the ordinance proposed to be enacted is likely administrative in character.

There exists a second and independent reason why, in my judgment, the ordinance in question is not subject to an initiative or referendum election under K.S.A. 12-3013. In *State ex rel. Frizzell v. Paulsen*, 204 Kan. 857, 465 P.2d 982 (1970), the court refused to compel submission of a proposed ordinance under K.S.A. 12-3013, which sought to "bar all activity within the city relating to that which is commonly known as urban renewal and development under state and federal law. . . ." The court pointed out that "Art. 1, Section 10 of the federal constitution forbidding a state to pass any law impairing the obligation of contracts is applicable to political subdivisions of the state." The court found that enactment of the proposed ordinance would operate to impair existing contractual obligations, and following a similar holding in *State ex rel. Frank v. Salome, supra*, refused to compel submission of the proposed ordinance on that ground.

In this instance, the City of Basehor has entered into a contract with Solid Waste Disposal, Inc. to undertake a city-wide solid waste trash collection program." Thereunder, the contractor is both obligated and entitled to provide service to all those persons required to request and utilize that service under section 18 of Ordinance No. 94. Repeal of Ordinance No. 94 would substantially alter and would thus impair the existing contractual obligations of the city and the contractor. Under the extant decisions of the Kansas Supreme Court, a proposed ordinance which impairs the obligations of existing contracts of the city is not eligible for submission under K.S.A. 12-3013.

Mr. Douglas G. Waters
Page Seven
October 20, 1975

Accordingly, I cannot but conclude that the proposed ordinance is ineligible for submission to the voters under K.S.A. 12-3013, and that city officials, as well as the county election officer, have no responsibility to take any action whatever with regard to the petition filed seeking submission of the proposed ordinance to repeal Ordinance Nos. 94 and 96.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Ms. Sylvia Lovvorn
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