



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 23, 1976

ATTORNEY GENERAL OPINION NO. 76- 24

Mr. J. Byron Meeks
City Attorney of Lewis
623 Colony Avenue
Post Office Box 228
Kinsley, Kansas 67547

Re: Public Health--Cities--Mandatory Solid Waste Collection

Synopsis: Under *Uhl v. Ness City, et al.*, decided by the federal district court, Kansas cities continue to have power to adopt and enforce mandatory solid waste collection programs, and to assess mandatory charges for services rendered in such programs.

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Dear Mr. Meeks:

I have your letter of January 21, concerning the continuing power of Kansas cities to enact and enforce ordinances for mandatory solid waste collection programs, and imposing mandatory charges therefor, in light of the recent decision of the United States District Court for the District of Kansas, in *Uhl v. Ness City, et al.* I enclose pages 8 through 11 of the Memorandum and Order filed by the court on December 1, 1975. The narrow issue before the court was clarified by its statement on page 8, as follows:

"In this action, plaintiffs make no claim that it is unconstitutional for the city to require that trash be removed weekly from residential premises; no claim is made that the city may not take upon itself, as a municipal function, the collection of solid waste,

Mr. J. Byron Meeks
Page Two
January 23, 1976

or authorize its collection by a licensed contractor; and there is no question raised that the mandatory collection charges assessed by each city are themselves excessive, or arbitrary. The sole constitutional issue for consideration in Count I of this action is whether or not municipal officials may terminate an exclusive source of water service for failure to pay a trash collection fee."

Thus, the court expressly pointed out that the case involved no question of the power of cities to enact and enforce ordinances providing for mandatory trash collection and assessing mandatory charges therefor. Thus, residents' liability for the charges assessed by the city remains intact and completely unaffected by this decision. The sole question considered by the court was the validity of a particular device utilized to enforce payment of a charge the legality of which is itself unquestioned, *i.e.*, a mandatory charge for mandatory solid waste collection. The method to enforce payment considered in the case was held to be unconstitutional, that of termination of municipal water service for nonpayment of the mandatory trash charge. However, liability for the charge remains, and payment may be enforced through any other lawful means.

A review of cases of other jurisdictions discloses no case in which a court has held that enactment and enforcement of a mandatory solid waste collection program, and the assessment of mandatory charges therefor, was beyond the police power of the city. It is certainly my opinion that Kansas cities continue to have the power to adopt and enforce mandatory solid waste collection programs, and to enforce payment of mandatory charges therefor by any lawful means.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj