



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 30, 1976

ATTORNEY GENERAL OPINION NO. 76- 350

Mr. Lawrence H. Litson
Gove County Attorney
P. O. Box 36
Gove, Kansas 67736

Re: Counties--Solid Waste--Charges

Synopsis: Under the statutory authority of K.S.A. 65-3410(a)(4) counties and cities may collect delinquent fees or charges for solid waste collection in the same manner as ordinary county ad valorem property taxes are collected. Such delinquent fees shall constitute assessments against respective parcels of land and are a lien on the property for the amount of such delinquent fees.

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Dear Mr. Litson:

As Gove County Attorney you request an opinion concerning a resolution providing that delinquent solid waste fees may be collected in the same manner as the ad valorem property taxes.

K.S.A. 65-3410(a)(4) provides thusly:

"The delinquent fees set forth in the report as confirmed shall constitute assessments against the respective parcels of land and are a lien on the property for the amount of such delinquent fees. A certified copy of the confirmed report shall be filed with the county clerk for the amounts of the respective assessments against the respective parcels of land as

they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the county clerk of the county in which the property is situated, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem property taxes shall be applicable to such assessment.

Any city collecting solid waste fees or charges may collect delinquent fees or charges for garbage and trash storage, collection and disposal in the manner provided for counties."

The above pertinent provision was discussed in Attorney General's Opinion No. 76-205. The Attorney General stated:

"Delinquent fees shall constitute assessments against the respective parcels of land, and are a lien against such property for the amount of the uncollected fees. The fees thus assessed are collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected.

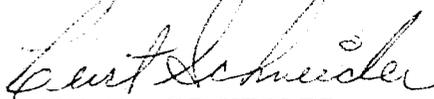
Under the statutory procedure, the fees are fixed according to the use of the property, volume of waste generated from its use, and any other factors which reasonably relate the waste disposal fee to the property involved. It is imposed upon the land rather than as a personal liability of the land owner. Although not a tax, it is at least a charge in the nature of a special assessment, as contemplated by the statute, according to the benefit accruing to the property from the service, measured in part by the use of the property, the waste generated therefrom, and other pertinent factors. There exists,

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thus, some colorable justification for assessment of delinquent charges against the real property and collection of such sums in the manner as delinquent ad valorem property taxes. There is no similar apparent basis for assessment of collection service charges and collection of delinquent accounts in the manner as personal property taxes. The delinquent accounts do not, under the resolution, become liens against the personal property, and indeed, there is no basis under the resolution for assessing such charges against personal property. Under the statute, the assessment of such charges against real property is arguably justified by the requirement that the charges be fixed in amounts relating to the benefits derived by and burdens of solid waste resulting from such real property. Obviously, there is no comparable basis for assessing delinquent charges as liens against personal property, which is entirely unrelated to the basis upon which the charges are fixed."

Applying the above discussion to your particular problem, it is the opinion of this office that the county and city are within the statutory bounds in attaching the solid waste fee to the ad valorem property taxes for collection. The practical effect is that the ad valorem property tax and the fee for solid waste are computed together and the resident must pay at least one-half (1/2) of this total amount before December 20 of the year in question or be declared delinquent for the total amount yet remaining to be paid, and such amount is due immediately after December 20.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:BEW:jj