



STATE OF KANSAS

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April 8, 1980

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ATTORNEY GENERAL OPINION NO. 80- 84

Mr. Douglas G. Waters
City Attorney, City of Basehor
302 Shawnee
Leavenworth, Kansas 66048

Re: Public Health--Solid and Hazardous
Waste--City's Collection of Delinquent
Fees Owing for Disposal of Solid Wastes

Synopsis: A city which has established its own
solid waste management system and collects
fees for solid waste disposal services
may proceed to collect delinquent fees
or charges pursuant to K.S.A. 1979 Supp.
65-3410 without the involvement or
approval of the board of county
commissioners of the county in which
said city is located. Cited herein:
Article 34 of Chapter 65, Kansas
Statutes Annotated, and K.S.A. 1979
Supp. 65-3410.

* * *

Dear Mr. Waters:

You have requested an opinion of this office concerning the City of Basehor's authority to collect delinquent fees owing for disposal of solid wastes under K.S.A. 1979 Supp. 65-3410. You advise that the city has adopted its own solid waste management plan, independent of the county plan, and that pursuant to that plan, the city collects and disposes of the solid wastes of city residents, and charges fees for that service. On these facts, you inquire whether the city may proceed to collect delinquent fees or charges for disposal of solid wastes pursuant to K.S.A. 1979 Supp. 65-3410 without the involvement or approval of the board of county commissioners.

K.S.A. 1979 Supp. 65-3410 provides, in pertinent part:

"(a) Each city or county or combination of such cities and counties may provide for the storage, collection, transportation, processing and disposal of solid wastes generated within its boundaries; and shall have the power to purchase all necessary equipment, acquire all necessary land, build any necessary buildings . . . and to do all other things necessary for a proper effective solid waste management system including the levying of fees and charges upon persons receiving service."

The statute further provides that the board of county commissioners of any county may each year establish a schedule of fees for services provided, which schedule may provide for classification of the real property in the county according to the various land uses and the volume of wastes generated from different land uses, and other such factors. Fees thus established are to be collected on either a monthly, quarterly or yearly basis. Additionally, the statute provides that for "[a]ny fees . . . which remain unpaid for a period of sixty (60) or more days after the date upon which they were billed may be collected thereafter by the county as provided herein."

As you have correctly noted, the statute next establishes a four-part due process procedure for the collection of delinquent fees, set forth in subsections (a)(1) through (a)(4), inclusive, of K.S.A. 1979 Supp. 65-3410. In short, this statutory procedure requires the preparation of a report of delinquent fees, and the holding of a hearing thereon, after providing notice to the owners listed on the report and affording an opportunity to said owners to make objections to or protests of the report. Thereafter, the board of county commissioners may make necessary revisions of the report and cause it to be recorded by the county clerk, and to assess the delinquent fees owed by the respective land owners as liens against the respective parcels of land, which "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." K.S.A. 1979 Supp. 65-3410(a).

Throughout all of the foregoing, the statute refers to the authority of the board of county commissioners to establish a fee schedule, to conduct hearings, and to fix liens against real property for delinquent fees. Notably, however, cities which have established a solid waste management system have the same powers and authority granted to counties, as provided in the last paragraph of subsection (a) of the statute in question, which paragraph states:

"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." (Emphasis added.)

You advise that in the case of Robert E. and Phyllis Bryan, et al. v. City of Basehor, et al (Case No. 46564, Leavenworth County District Court), decided June 9, 1977, the Honorable District Judge Kenneth Harmon concluded that "provisions of K.S.A. 65-3410(a)(1), (2) and (3) do not apply to cities." We respectfully submit that that conclusion is in error, given the express statement of the legislature, in the above-quoted paragraph, that cities collecting solid waste fees or charges may collect delinquent fees or charges "in the manner provided for counties," which statement we believe refers to subsections (a)(1), (2), (3) and (4) of K.S.A. 1979 Supp. 65-3410. Notably, nothing in these subsections of the statute in question, or in any other provision of Article 34 of Chapter 65 of the Kansas Statutes Annotated, requires a city seeking to collect delinquent fees for solid waste disposal services to do so with the involvement or approval of a board of county commissioners. Further, we note that the federal district court for the District of Kansas found that

"[t]he Kansas legislature has granted both counties and cities special powers to collect assessments for solid waste programs. K.S.A. §65-3410 provides that unpaid fees for solid waste services can become liens on real property and can be treated in the same manner as ad valorem taxes, thus subjecting the real estate to possible sale in satisfaction of delinquent charges." (Emphasis added.) Uhl v. Ness City, 406 F.Supp. 1012, 1016 (D.Kan., 1975) Affirmed, on other grounds, 590 F.2d 839 (10th Cir., 1979).

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Accordingly, we conclude that a city which has established its own solid waste management system and collects fees for solid waste disposal services may proceed to collect delinquent fees or charges pursuant to K.S.A. 1979 Supp. 65-3410 without the involvement or approval of the board of county commissioners of the county in which said city is located.

Very truly yours,

A handwritten signature in cursive script, reading "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General of Kansas

A handwritten signature in cursive script, reading "Steven Carr".

Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk