



STATE OF KANSAS

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May 4, 1984

ATTORNEY GENERAL OPINION NO. 84- 39

Leonard L. Buddenbohm
County Counselor
Atchison County
109 North Sixth Street
P. O. Box 194
Atchison, Kansas 66002

Re: Public Health--Solid and Hazardous Waste--
Restrictions on Local Authorities

Synopsis: A county which maintains a county sanitary landfill (pursuant to K.S.A. 65-3401 et seq.), and which levies fees and charges therefor against county residents, may impose a reasonable fee upon non-residents of the county who seek to use said landfill. The imposition of such a fee does not impede interstate or intrastate transportation or disposal of solid waste, in violation of K.A.R. 28-29-1, provided fees for use of the landfill are fairly apportioned between residents and nonresidents, do not discriminate against non-residents, and are fairly related to services provided by the county. Cited herein: K.S.A. 65-3401, 65-3410, K.A.R. 28-29-1, U.S. Const., Art. I, §8, cl. 3.

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Dear Mr. Buddenbohm:

You request our interpretation of K.A.R. 28-29-1. Specifically, you ask whether a fee imposed against non-residents of a county,

who seek to use the county sanitary landfill, would impede interstate or intrastate transportation and disposal of solid waste, in violation of the aforesaid regulation.

K.A.R. 28-29-1 provides as follows:

"These regulations shall not interfere with the right of cities or counties to enact ordinances or resolutions for control of solid waste management practices which are more stringent than the requirements of these regulations except, a local agency shall not enforce a requirement, other than those in this article, which would impede interstate or intrastate transportation or disposal of solid waste, or which would impede establishment or use of facilities for regional management of solid waste." (Emphasis added.)

In Kansas Attorney General Opinion No. 82-21, we opined that limiting use of a county sanitary landfill to local refuse sources would impede interstate or intrastate transportation or disposal of solid waste, in violation of the above-quoted regulation. However, said opinion did not indicate whether a fee could be imposed against non-residents of the county for the use of a landfill which is maintained pursuant to K.S.A. 65-3401 et seq., and we now consider said issue for the first time.

Both the United States Supreme Court and the Kansas Supreme Court have indicated, generally, that interstate commerce may be required to "pay its way," and that a state has a significant interest in exacting from interstate commerce its fair share of the cost of state government. See Commonwealth Edison Co. v. Montana, 453 U.S. 609, 69 L.Ed.2d 884 (1981); Kansas Tobacco-Candy Distributors & Vendors, Inc. v. McDonald, 214 Kan. 67 (1974). Further, it has been held that a state tax does not offend the Commerce Clause of the U.S. Constitution (U.S. Const., Art. I, §8, cl. 3) if it "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the State." Commonwealth Edison Co. v. Montana, supra, 69 L.Ed.2d at 894.

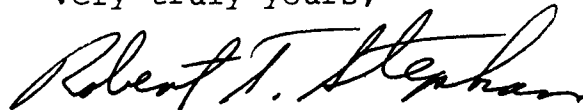
The above-cited cases upheld state taxes which were alleged to violate the Commerce Clause of the U.S. Constitution. However, in our judgment, the tests laid down in the Commonwealth Edison

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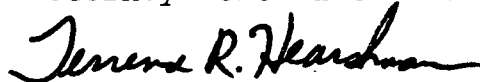
case may be used to determine whether a user fee against non-residents of a county constitutes a requirement which would "impede interstate or intrastate transportation or disposal of solid waste" under K.A.R. 28-29-1.

Applying said tests, it is our opinion that a county which levies fees and charges against its residents, pursuant to K.S.A. 65-3410, has an interest in exacting from non-residents their fair share of the cost of maintaining a landfill. Further, in our judgment, a county which maintains a county sanitary landfill (pursuant to K.S.A. 65-3401 et seq.), and which levies fees and charges therefor against county residents, may impose a reasonable fee against non-residents of the county who seek to use said landfill. The imposition of such a fee does not impede interstate or intrastate transportation or disposal of solid wastes, in violation of K.A.R. 28-29-1, provided fees for use of the landfill are fairly apportioned between residents and non-residents, do not discriminate against non-residents, and are fairly related to services provided by the county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm