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September 20, 1984

Attorney General Opinion No. 84- 97

H. Scott Beims
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Public Health -- Solid Waste -- Collection and Disposal
by County; Schedule of Fees

Synopsis: Pursuant to K.S.A. 65-3410, a county may adopt a resolution establishing a schedule of fees imposed on real estate, with such revenues applied toward the acquisition and operation of county waste disposal sites or for the financing of waste collection and disposal services. While a resolution establishing such fees may not be adopted after July 1, once such a resolution is in place it does not need to be reaffirmed each year, unless amendments are made to the fee schedule. Although not based upon a value of real property, as are ad valorem taxes, solid waste disposal fees are billed and collected in the same manner as such taxes. Fees of this type are based upon the use to which real property is put, and a classification system which divides businesses into small, medium and large represents a valid attempt to draw lines based upon the volume of waste generated. Any property owner or business which is aggrieved by the classification system may protest the assessed fee as provided by K.S.A. 65-3410(a)(3). Cited herein: K.S.A. 1983 Supp. 19-101a, K.S.A. 65-3405, K.S.A. 1983 Supp. 65-3407, 65-3409, K.S.A. 65-3410, K.S.A. 1983 Supp. 79-1803, 79-2001, 79-2004, L. 1974, ch. 352.

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Dear Mr. Beims:

As County Attorney for Rawlins County, Kansas, you request the opinion of this office on several concerns you have which relate to the imposition and collection of solid waste disposal fees by the county. You express concern that the initial resolution, which was adopted in 1982, is defective as to the system of real property classification it contains, and is further no longer valid due to the county commission's failure to annually readopt it. You accordingly pose the following four questions:

- "1. Can the county adopt, by using home rule, a resolution that would do away with the requirement to adopt such a resolution annually?
- "2. Does the county have any remedy as far as the collection of delinquent assessments for 1983 and 1984?
- "3. Since the proper resolution was not adopted prior to July 1, 1984, can the county assess charges to be billed in November?
- "4. Is the classification of property contained in the present resolution adequate or does it have to relate specifically to the real estate involved?"

K.S.A. 65-3401 et seq. was enacted in 1970 by the Kansas Legislature, and initially consisted of 16 sections. Amendments have been made to various sections since that time, with major revisions made in 1974. (L. 1974, ch. 352). Pertinent parts of the act include K.S.A. 65-3405 (formation of county solid waste management plan), K.S.A. 1983 Supp. 65-3407 (operation of solid waste processing facilities), K.S.A. 1983 Supp. 65-3409 (prohibited acts relating to solid waste disposal), and K.S.A. 65-3410 (authority of counties and cities to impose regulations and charge fees relating to solid waste disposal). In examining these provisions, we are unable to find a section which is not uniformly applicable to all counties and cities. This is important, since K.S.A. 1983 Supp. 19-101a empowers counties to "perform such powers of local legislation and administration as they deem appropriate" subject to certain limitations and restrictions, including the limitation that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." K.S.A. 1983 Supp. 19-101a(a). Accordingly, a county may not, through the enactment of a charter resolution, alter or eliminate any of the requirements of K.S.A. 65-3401 et seq. By contrast,

see City of Junction City v. Griffin, 227 Kan. 332 (1980). Attorney General Opinion No. 80-65 is affirmed in this respect.

Your second and third questions deal with the collection of delinquent assessments and the procedure for the county to take this coming November as to charges not yet billed. This will be the third year for the imposition of solid waste disposal fees, pursuant to the initial 1982 resolution. It is our understanding that the resolution has not been amended since that time, either as to the amount of the fees or the classification of real property according to use and volume of waste produced. In examining the language of the resolution (a copy of which you enclosed), we note that it is not limited by its terms to any specific period of time, but rather is open-ended. Thus, in the absence of any other provision to the contrary, the requirements established in 1982 should continue to be in effect today, and so authorize the mailing of fee statements in November.

It is argued that the language of K.S.A. 65-3410(a) imposes a requirement that the fee/classification resolution be adopted every year in order to be in effect. Language in the subsection pertinent to this position states:

"On or before the first day of July of each calendar year, the board of county commissioners of any county, may, by resolution establish a schedule of fees to be imposed on real property within any county solid waste service area, revenue from such fees to be used for the acquisition, operation and maintenance of county waste disposal sites and/or for financing waste collection, storage, processing, reclamation, and disposal services, where such services are provided. In establishing the schedule of fees, the board of county commissioners shall classify the real property within the county solid waste service area based upon the various uses to which the real property is put, the volume of waste occurring from the different land uses and any other factors that the board determines would reasonable relate to waste disposal fee to the real property upon whcih it would be imposed."
(Emphasis added.)

In our opinion, the language underscored above does not have the effect of requiring a county commission to adopt a new resolution each year, regardless of whether any of the terms of the resolution are amended. While a county clearly must adopt any resolution under K.S.A. 65-3410 before July 1 in order to have the

charges included in the tax statements, which are sent out after November 1 and which are payable by December 20 (K.S.A. 1983 Supp. 79-1803, 79-2001, 79-2004), any existing resolution is not invalid merely because it is not re-adopted prior to the succeeding July 1. Where, as here, the same charges are imposed from one year to the next, a construction requiring successive re-adoptions would mandate the performance of useless acts, a result which is to be avoided in the interpretation of statutes. In re Adoption of Baby Boy L., 231 Kan. 199, Syl. ¶8 (1982), 73 Am.Jur.2d, Statutes, §251, p. 424. Residents of the county are given clear notice of the existence of the fees, as well as the way in which real property is to be classified, by the existing resolution, and we cannot conclude that it is rendered void by virtue of not having been adopted prior to July 1 during the current year. Accordingly, fee statements based upon the resolution enacted in 1982 may be included within the ad valorem tax statements which the county treasurer will send out after November 1.

Insofar as the collection of delinquent fees (i.e. those assessed in 1982 and 1983) is concerned, the statutes provide that such fees, even though not technically ad valorem taxes, are to be collected in the same manner. K.S.A. 65-3410(a) states that such fees are declared to be delinquent if not paid within 60 days after being billed, and then sets forth the following procedure for their collection:

"(1) At least once a year the board of county commissioners shall cause to be prepared a report of delinquent fees. The board shall fix a time, date, and place for hearing the report and any objections or protests thereto.

"(2) The board shall cause notice of the hearing to be mailed to the property owners listed on the report not less than ten (10) days prior to the date of the hearing.

"(3) At the hearing the board shall hear any objections or protests of property owners liable to be assessed for delinquent fees. The board may make such revisions or corrections to the report as it deems just, after which, by resolution, the report shall be confirmed.

"(4) 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."

For the statutes providing for the levy, collection and enforcement of county ad valorem property taxes, see articles 20, 23 and 28 of chapter 79 of the Kansas Statutes Annotated.

Your final questions concern the manner in which the 1982 resolution classifies property in the county for purposes of the solid waste disposal fee. The resolution sets up the following rate schedule:

"a. Residents and business of Atwood City:

1. Residential-----\$ 6.00/year
2. Small business use----- 12.00/year
3. Medium business use----- 18.00/year
4. Large business use----- 24.00/year

"b. Residents and businesses of Herndon and McDonald:

1. Residential-----\$ 6.00/year
2. Business use----- 12.00/year

"c. Rural residents of Rawlins County:

1. \$3.00/year"

In establishing this schedule, the county commission acted under the authority of that portion of K.S.A. 65-3410(a) which states:

"In establishing the schedule of fees, the board of county commissioners shall classify the real property within the county solid waste service area based upon the various uses to which the

real property is put, the volume of waste occurring from the different land uses and any other factors that the board determines would reasonably relate the waste disposal fee to the real property upon which it would be imposed.

"The board shall set a reasonable fee for each category established and divide the real property within the county service areas according to categories and ownership. The board shall impose the appropriate fee upon each division of land and provide for the billing and collection of such fees."

An earlier classification made pursuant to this statute was challenged in the case of Zerr v. Tilton, 224 Kan. 394 (1978). In finding that the schedule of fees contained in the Gove County Solid Waste Management Plan was constitutionally permissible, the court quoted with approval the decision of the district court which found no violation of equal protection concepts. The opinion of the district court at one point states:

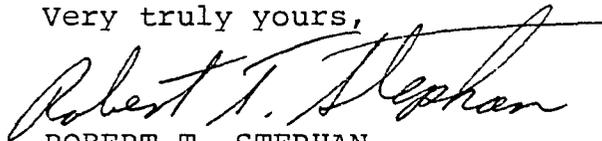
"Likewise, there can be little argument that commercial, industrial, institutional and governmental establishments generate waste generally on a larger scale than residential property. Further, many such establishments have a need for pickups more frequently than once per week. Such considerations justify not only a different classification from agriculture but also a fee charge which varies with the volume and the number of pickups. It is to be noted that the monthly service charge in this class for minimum pickups and volume is the same as for residential property. Again, persons within like classifications are treated equally and the service is available to all in the class.'" 224 Kan. at 398.

In our opinion, the same reasoning is applicable here. Additionally, while the resolution does not define what constitutes small, medium or large business use, given the opportunity which each property owner has to contest the level of his or her assessment [K.S.A. 65-3410(a)(3)], and the ability of the county commission to make such revisions or corrections as it deems just, no constitutional infirmity exists in the classification scheme contained in the resolution.

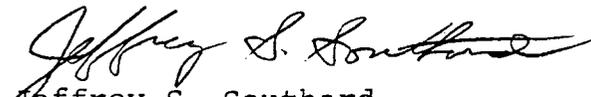
In conclusion, pursuant to K.S.A. 65-3410, a county may adopt a resolution establishing a schedule of fees imposed on real es-

tate, with such revenues applied toward the acquisition and operation of county waste disposal sites or for the financing of waste collection and disposal services. While a resolution establishing such fees may not be adopted after July 1, once such a resolution is in place it does not need to be reaffirmed each year, unless amendments are made to the fee schedule. Although not based upon a value of real property, as are ad valorem taxes, solid waste disposal fees are billed and collected in the same manner as such taxes. Fees of this type are based upon the use to which real property is put, and a classification system which divides businesses into small, medium and large represents a valid attempt to draw lines based upon the volume of waste generated. Any property owner or business which is aggrieved by the classification system may protest the assessed fee as provided by K.S.A. 65-3410(a)(3).

Very truly yours,



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