



STATE OF KANSAS

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October 8, 1984

ATTORNEY GENERAL OPINION NO. 84- 105

Edwin A. Van Petten
Wabaunsee County Attorney
Wabaunsee County Courthouse, 3rd Floor
Alma, Kansas 66401

Re: Taxation--Levy of Taxes--Certification of City
Levies, Time; Payments by County Treasurer

Synopsis: K.S.A. 1983 Supp. 79-1801 and 12-1678a are statutes in pari materia which authorize and require the county clerk to place delinquent utility charges (constituting a lien on real property) upon the tax rolls where a city ordinance provides for certification and collection "in the same manner as taxes levied against property." Cited herein: K.S.A. 12-6a17, 12-1617e, 12-1673, K.S.A. 1983 Supp. 12-1678a, K.S.A. 12-1755, 65-3410, K.S.A. 1983 Supp. 79-1801, K.S.A. 79-1804.

* * *

Dear Mr. Van Petten:

You request our opinion as to whether the County Clerk of Wabaunsee County is authorized and required to place certain delinquent utility charges, which are certified pursuant to a city ordinance, upon the county tax rolls for collection. The subject ordinance creates a lien for unpaid utility bills against real property to which city utility services are furnished, and in pertinent part provides as follows:

"If charges for the utilities and services hereinbefore mentioned are not timely paid, as provided by the Ordinances of said City, the City Clerk of said City shall from time to time, and not less often than annually, certify

to the County Clerk of Wabaunsee County, Kansas, the legal description of the real property to which said services were provided, along with the sum of such delinquent charges, including penalty and interest accrued, to be placed upon the tax rolls for collection. Upon such certification said charges shall become a lien against the property upon which they are certified, subject to the same penalties and collected in the same manner as taxes levied against the property are by law collectible." (Emphasis added.)

This office has previously concluded that a city may use its home rule power to enact an ordinance creating a lien on real property for unpaid water bills. See Kansas Attorney General Opinion No. 80-215. Additionally, the Kansas Supreme Court has held that an ordinance authorizing such a lien is constitutional [Cook v. City of Enterprise, 233 Kan. 1039 (1983)]. However, we are unaware of any Kansas case which considers the authority and responsibility of the county clerk to place delinquent utility charges upon the tax rolls where a city ordinance provides for certification and collection "in the same manner as taxes levied against the property." In order to address this question, it is necessary to consider the statutory duties of the county clerk relating to preparation of tax rolls.

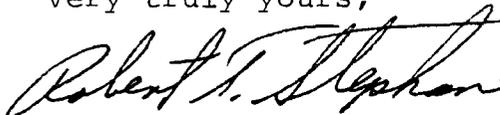
K.S.A. 1983 Supp. 79-1801 requires that the county clerk place "taxes" certified by taxing subdivisions on the tax roll, while K.S.A. 79-1804 prescribes that a lien for such "taxes" attaches to real property on the first day of November of the year in which the tax is levied. However, it is well established that the term "taxes" as used in these statutes includes special assessments. See Tull v. Royston, 30 Kan. 617 (1883); Doty v. Maddux, 82 Kan. 416 (1910); Kansas Attorney General Opinion No. 82-3. Further, K.S.A. 1983 Supp. 12-1678a, which is referred to in K.S.A. 1983 Supp. 79-1801 with regard to distribution of "taxes," defines taxes as including "ad valorem property taxes, local gross earnings taxes, special assessments and all other taxes and fees collected with or at the same time as ad valorem property taxes." Additionally, it should be recognized that numerous statutes prescribe that certain charges and fees which are neither special assessments¹ or taxes shall be placed upon the tax rolls. See, e.g., K.S.A. 12-6a17, 12-1617e, 12-1673, 12-1755 and 65-3410 (a)(4).

¹For an analysis of the distinguishing features of special assessments, see the following cases: Dutoit v. Board of Johnson County Comm'rs., 233 Kan. 995, 999 (1983); Davies v. City of Lawrence, 218 Kan. 551, 558 (1976); State Highway Commission v. City of Topeka, 193 Kan. 335, 337-338 (1964); Mount Hope Cemetery Co. v. City of Topeka, 190 Kan. 702, 707 (1963).

In our judgment, K.S.A. 1983 Supp. 79-1801 and 12-1678a are statutes in pari materia which authorize and require the county clerk to place delinquent utility charges (constituting a lien on real property) upon the tax rolls where a city ordinance provides for certification and collection "in the same manner as taxes levied against property." The responsibility of the county clerk to place said charges on the tax rolls does not emanate from the city ordinance imposing the lien, but from the provisions of the above-cited statutes which relate to the preparation of "tax" rolls by the county clerk.

Although what has been said above is dispositive of the question you have posed, it should be noted that the ordinance which was challenged in Cook v. City of Enterprise, supra, contained a provision whereby delinquent utility charges constituting a lien on real property were to be certified to the county clerk "to be placed on the tax rolls for collection . . . and collected in like manner as other taxes are by law collectible." The appellant in the Cook case did not specifically challenge the collection procedures of the ordinance, and the court's opinion does not address this issue. It is significant to note, however, that the court could have addressed the issue, if necessary, to determine the merits of the action (i.e. the validity of the ordinance under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution). See Anderson v. Overland Park Credit Union, 231 Kan. 97,107 (1982); State v. Goza, 4 Kan. App. 2d 309, 312 (1980); State v. Nelson, 210 Kan. 439, 443 (1972).

Very truly yours,



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RTS:JSS:TRH:sc