

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 36

Robert L. Earnest
Russell City Attorney
P.O. Box 72
410 North Main Street
Russell, Kansas 67665

Re: Cities and Municipalities--Emergency Telephone
Services--Emergency Telephone Tax; Imposition by
Cities or Counties

Synopsis: Both counties and cities are authorized to
implement emergency telephone services within their
respective jurisdictions pursuant to K.S.A.
12-5302(a). However, K.S.A. 12-5301 et seq.
does not restrict a county's authority to
unincorporated areas of the county. The only
limitation is that a county may impose a tax for
emergency telephone services only in those portions
of the county to receive such service. Also, a
city or county is required to enter into a contract
with a service utility or company before imposing
the tax pursuant to K.S.A. 12-5302(a). Cited
herein: K.S.A. 12-5301; 12-5302; K.S.A. 1991
Supp. 19-101a.

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Dear Mr. Earnest:

As city attorney for the city of Russell you request our
opinion regarding K.S.A. 12-5302. Specifically, you ask
whether K.S.A. 12-5302(a) allows the county to implement an
emergency telephone service throughout the entire county, or

whether the county is limited by the terms of the statute to that portion of the county in which incorporated municipalities do not exist. You also ask whether the statute requires a city or county to enter into a contract with the service company or utility having the telephone service in that area before the city or county may impose the tax provided for in this statute.

Pursuant to K.S.A. 12-5302(a), a governing body is authorized to implement an emergency telephone service.

"In addition to other powers for the protection of the public health and welfare, a governing body may provide for the operation of an emergency telephone service and may pay for it by imposing an emergency telephone tax for such service in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The governing body may do such other acts as are expedient for the protection and preservation of the public health and welfare and are necessary for the operation of the emergency telephone system. The governing body is hereby authorized by ordinance in the case of cities and by resolution in the case of counties to impose such tax in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The amount of such tax shall not exceed \$.75 per month per exchange access line or its equivalent." (Emphasis added).

"Governing body" is defined in K.S.A. 12-5301(f) as "the board of county commissioners of a county or the city commission, city council or other governing body of a city." The legislative history indicates that the legislature intended to give local governing bodies the authority to implement emergency telephone services. Minutes, Senate Committee on Transportation, February 15, 1980. Subsection (b) of K.S.A. 12-5302 provides different procedures for implementing the service depending on whether the jurisdiction to be served is a city or a county. In our opinion, the clear intent of this statute was to authorize both counties and cities to install

and operate emergency telephone services, and impose a tax therefore, within their respective jurisdictions.

There is no language in the act, however, which would limit a county's authority to operate such a service to unincorporated areas of the county. Compare K.S.A. 12-754. If a city has already implemented an emergency telephone service pursuant to K.S.A. 12-5301 et seq. or the city's home rule authority, the county may be precluded from interfering. See K.S.A. 1991 Supp. 19-101a(5). Otherwise, the only restriction cited in K.S.A. 12-5302 limits the imposition of the tax for emergency telephone service to those portions of the county for which the service has been contracted.

You also ask whether a city or county is required to enter into a contract before imposing a tax under K.S.A. 12-5302(a). This statute specifically states that a governing body may impose an emergency telephone tax in its jurisdiction "for which emergency telephone service has been contracted" (emphasis added). Further, subsection (b) provides:

"The proceeds of the tax shall be utilized to pay for the operation of emergency telephone operation asset forth in subsection (b) of K.S.A. 12-5304, and amendments thereto, and may be imposed at any time subsequent to execution of a contract with the provider of such service at the discretion of the governing body." (Emphasis added).

Under a plain meaning analysis of this statutory language, the governing body is required to enter into a contract with an emergency telephone service before a tax can be implemented.

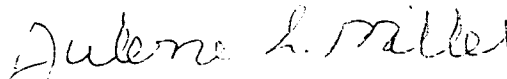
In conclusion, K.S.A. 12-5302(a) authorizes both cities and counties to implement an emergency telephone service within their respective jurisdictions. However, K.S.A. 12-5301 et seq. does not restrict a county's authority to unincorporated areas of the county. The only limitation is that a county may impose a tax for emergency telephone services only in those portions of the county to receive such

service. Also, a city or a county is required to enter into a contract with a service utility or company before imposing the tax.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm