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January 2, 2013

ATTORNEY GENERAL OPINION NO. 2013-2

John McNish, City Attorney  
City of Blue Rapids  
c/o Bolton & McNish, LLC  
916 Broadway, P.O. Box 386  
Marysville, Kansas 66508-0386

Re: Cities and Municipalities—General Provisions—Collection of Certain  
Unpaid Special Assessments; Action in District Court for Debt

Cities and Municipalities—Buildings, Structures and Grounds—Unsafe or  
Dangerous Structures and Abandoned Property

Synopsis: K.S.A. 12-1,115 authorizes a city to both levy a special assessment *and*  
file a civil action to collect the demolition costs from the property owner of  
an unsafe and dangerous structure. Furthermore, a city is not required to  
remit to the county any amount recovered in a lawsuit to recoup the  
moneys expended to remove or raze the unsafe or dangerous structure.  
Cited herein: K.S.A. 12-1,115; K.S.A. 2012 Supp. 12-1755; and 79-2015.

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Dear Mr. McNish:

As City Attorney for the City of Blue Rapids, you state that the City condemned a  
specific residential structure as unsafe and dangerous and followed all necessary  
procedures to raze the structure, fill the basement, grade the lot and re-seed the grass.<sup>1</sup>  
You state the costs were paid for with money from the general fund of the City and refer  
to these costs as demolition costs. The City sought collection of the demolition costs

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<sup>1</sup> We have assumed, therefore, that the requirements of K.S.A. 12-1750 *et seq.* have been met.

from the owner of the property in accordance with the city ordinance and state law.<sup>2</sup> The City Clerk certified to the County Clerk the demolition costs as a special assessment against the property to be added on the tax rolls.<sup>3</sup> Subsequently, the City of Blue Rapids was able to locate the owner of the property and filed a lawsuit pursuant to K.S.A. 12-1,115 to collect the costs incurred by the City. The City recovered a substantial amount of the demolition costs incurred to remove the unsafe and dangerous structure in the settlement of the lawsuit.

You ask for our opinion on whether the City can pursue a civil action to recover the demolition costs in the district court after having certified the demolition costs as a special assessment that is added to the tax rolls by the County Clerk. You also ask whether any amount recovered in the *lawsuit* should be remitted to the County for distribution with the other taxing jurisdictions because the City certified the special assessment to be included on the tax roll.

Regarding your first question on whether both options can be utilized by a city to collect the demolition costs, we found that on January 16, 1985, Attorney General Robert Stephan issued an opinion that concluded K.S.A. 79-2015<sup>4</sup> does not authorize a city to collect special assessments<sup>5</sup> in the same manner as a personal debt of the property owner.<sup>6</sup> Less than a month later, on February 13, 1985, Senate Bill 76 received a hearing in the Senate Committee on Local Government. The bill sought “legislative authorization of an alternative procedure for recovering the cities’ expenses and costs as a result of undertaking the abatement of public nuisances”<sup>7</sup> similar to K.S.A. 79-2015. Under the bill, a civil lawsuit could only be filed after the city sells all salvageable material and exhausts all insurance proceeds before beginning such actions to recover the remaining debt to the city. The new section of Senate Bill 76 became K.S.A. 12-1,115.<sup>8</sup>

K.S.A. 12-1,115 provides in relevant part:

If any special assessments levied by the city in accordance with K.S.A. 12-1617e,<sup>9</sup> 12-1617f<sup>10</sup> or 12-1755,<sup>11</sup> and amendments thereto, remain

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<sup>2</sup> Blue Rapids, Kansas, Municipal Code § 4-609 (1999); K.S.A. 2012 Supp. 12-1755(b).

<sup>3</sup> K.S.A. 2012 Supp. 12-1755(b).

<sup>4</sup> This statute provides that the taxes, fees, interest and penalties, levied and assessed by any state law administered by the Secretary of Revenue may be collected in the same manner as a personal debt of the taxpayer to the State of Kansas.

<sup>5</sup> A “special assessment” differs from general taxes in that it can be levied only on land and is based entirely on benefits conferred. *State Highway Commission v. City of Topeka*, 193 Kan. 335, 393 (1964).

<sup>6</sup> Attorney General Opinion No. 85-5.

<sup>7</sup> *Minutes*, Attachment 1, Senate Committee on Local Government, February 13, 1985.

<sup>8</sup> L. 1985, Ch. 73, Sec. 4.

<sup>9</sup> This statute provides for removal or abatement of nuisances within the city, including rank grass, weeds or other vegetation, and motor vehicles on private property.

<sup>10</sup> This statute provides for the cutting or destruction of all weeds on land within the city.

unpaid for a period of one year or more after their initial levy, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the district court of the county in which the city is located....*The city may pursue collection both by levying a special assessment and in the manner provided by this section, but only until the full cost and any applicable interest has been paid in full.*<sup>12</sup>

A plain reading of the first sentence in the statute leads to the conclusion that a city is *required* to levy a special assessment against the lot or parcel of ground,<sup>13</sup> the lot or piece of land,<sup>14</sup> or the unsafe or dangerous structure<sup>15</sup> *before* it is authorized to file a civil lawsuit to collect costs as a personal debt.<sup>16</sup> In fact, a city has to wait at least a year before it is authorized by the statute to proceed with a civil lawsuit to collect such costs.<sup>17</sup> Additionally, a plain reading of the last sentence in the statute clearly authorizes a city, in its discretion, to pursue both a special assessment and a civil lawsuit. The only limitation on this discretion is that once the debt is satisfied, a city must cease its collection efforts by either method. It is worth noting that the statute authorizing special assessments contains the same plain language.<sup>18</sup>

The question that remains is whether a city must remit any amount recovered from the lawsuit to a county. K.S.A. 2011 Supp. 12-1755(c) provides, “All moneys received from special assessments levied under the provisions of this section or from an action under [K.S.A. 12-1,115](#), and amendments thereto, when and if paid, shall be placed in the general fund of the city.” There is no additional language in the statute that provides instruction on the distribution of the moneys after the deposit. Therefore, a city, by the plain reading of the statute, does not have to *remit* moneys to a county for demolition costs recovered.<sup>19</sup> However, a city is not relieved of the responsibility of *notifying* the county clerk that the special assessment has been recovered.

For the reasons stated above, we conclude K.S.A. 12-1,115 authorizes a city to both levy a special assessment *and* file a civil action to collect the demolition costs from the property owner of an unsafe and dangerous structure. Furthermore, a city is not

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<sup>11</sup> This statute provides for the razing and removal of unsafe or dangerous structures and abandoned property, and it is the statute relied on by the City in this instance to levy the special assessment against the owner.

<sup>12</sup> Emphasis added.

<sup>13</sup> K.S.A. 12-1617e.

<sup>14</sup> K.S.A. 12-1617f.

<sup>15</sup> K.S.A. 2012 Supp. 12-1755.

<sup>16</sup> Note that ordinarily, a tax is not “debt” and a civil action will not lie for its recovery except where a statute confers the right to bring such action. *Hampton v. City of Wichita*, 192 Kan. 534, 536-37 (1964).

<sup>17</sup> K.S.A. 12-1,115; See Also *Minutes*, Senate Committee on Local Government, February 20, 1985.

<sup>18</sup> See K.S.A. 2012 Supp. 12-1755. (“The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.”).

<sup>19</sup> Note that K.S.A. 12-1617e and 12-1617f do not have equivalent language.

required to remit to the county any amount recovered in a lawsuit to recoup the moneys expended to remove or raze the unsafe or dangerous structure.

Sincerely,

Derek Schmidt  
Attorney General

Athena E. Andaya  
Deputy Attorney General

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