



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

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ATTORNEY GENERAL OPINION NO. 2015- 7

Joseph O'Sullivan
Branine, Chalfant & Hill, LLC
1 North Main St., Suite 418
P.O. Box 2027
Hutchinson, KS 67504-2027

Re: Public Health—Solid and Hazardous Waste—Cities or Counties Authorized to Provide for Collection and Disposal of Solid Wastes or Contract Therefor; Fees

Synopsis: The portion of a county administrator's salary directly related to the negotiation of contracts for services necessary to implement the county's solid waste management plan may be paid out of revenues received from fees collected pursuant to K.S.A. 2014 Supp. 65-3410(a). Fees collected pursuant to K.S.A. 2014 Supp. 65-3410(a) may only be expended for purposes that directly relate to purposes specified in that statute, and not for purposes that are merely incidental to those primary purposes. Cited herein: K.S.A. 2014 Supp. 65-3410; K.S.A. 75-704; K.S.A. 2006 Supp. 65-3410.

* * *

Dear Mr. O'Sullivan:

As Reno County Counselor, you ask our opinion whether a portion of a county administrator's salary and deferred compensation may be charged to or reimbursed from the county's solid waste fund.

In your letter, you state that Reno County has adopted and implemented a solid waste management plan ("the plan") pursuant to K.S.A. 2014 Supp. 65-3410. You further state that the county administrator typically does not oversee daily landfill operations, but is

directly involved in the negotiation of contracts for services necessary to the plan, including contracts for engineering and construction of solid waste disposal cells; contracts for monitoring and remediation of environmental contamination, and contracts for landfill gas collection systems and gas disposal. You also provide for our reference a copy of Reno County Resolution 2012-39, which establishes the office of county administrator and generally describes the duties of that position.

K.S.A. 2014 Supp. 65-3410(a) specifies the purposes for which fees collected under a county's solid waste management plan may be used:

[S]uch fees [may] be used: *To implement an approved solid waste management plan, to conduct operations necessary to administer the plan and to carry out its purposes and provisions; or for the acquisition, operation and maintenance of county waste disposal sites; or for financing waste collection, storage, processing, reclamation, disposal services and recycling programs, where such services are provided.*¹

We note that you asked a similar question in 2007 concerning whether solid waste fees could be used to pay for maintenance of a county road connecting the Reno County Landfill to a county primary arterial road. At that time, K.S.A. 2006 Supp. 65-3410(a) did not include the italicized language above, which was added to the statute in 2009.² In Attorney General Opinion No. 2007-18, Attorney General Paul Morrison concluded:

[K.S.A. 2006 Supp. 65-3410(a)] allows for the revenue to be expended for purposes that directly relate to statutorily specified purposes and not for purposes that are merely incidental to those primary purposes. Thus, in our opinion, maintenance of a county road that services adjacent business and individual property owners, as well as landfill related traffic, is not sufficiently related to the statutory purposes specified by K.S.A. 2006 Supp. 65-3410 to warrant use of revenue derived from fees imposed pursuant to that statute.

In other words, maintenance of that road was not sufficiently related to "the acquisition, operation and maintenance of county waste disposal sites; or for financing waste collection, storage, processing, reclamation, disposal services and recycling programs," which at the time were the only statutorily permissible uses for solid waste fees at the time.

However, the 2009 amendments to the statute broadened the permissible uses for solid waste fees. Fees collected pursuant to K.S.A. 2014 Supp. 65-3410(a) may also be used "[t]o implement an approved solid waste management plan, to conduct operations necessary to administer the plan and to carry out its purposes and provisions." Based upon the description of the county administrator's contract negotiation duties that you provide, we opine that such duties as described are directly related to the statutorily

¹ Emphasis added.

² L. 2009, Ch. 117, § 1.

specified uses of solid waste fees because the services contracted for are necessary to implement and carry out the purposes of the plan. We therefore opine that a county may use fees collected pursuant to K.S.A. 2014 Supp. 65-3410(a) to pay for the portion of a county administrator's salary and benefits directly attributable to such contract negotiation duties.

With respect to the county administrator's general administrative duties described in Reno County Resolution 2012-39, we do not have enough information to determine whether such duties are sufficiently related to the statutory purposes specified by K.S.A. 2014 Supp. 65-3410(a). Whether a county administrator's general administrative oversight of county operations is directly related to the purposes specified in K.S.A. 2014 Supp. 65-3410(a) is a question of fact. We therefore decline to provide an opinion on that issue.³

However, we reaffirm the general conclusion from Attorney General Opinion No. 2007-18, namely, that revenues collected pursuant to K.S.A. 2014 Supp. 65-3410(a) may only be expended for purposes that directly relate to purposes specified in that statute, and not for purposes that are merely incidental to those primary purposes.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb

³ The Attorney General provides opinions on questions of law, not questions of fact. K.S.A. 75-704.