

CITIES, TOWNS AND VILLAGES:
RUBBISH:

The City of Brentwood has the
authority under Sections 71.680
and 71.690, RSMo, to charge and

collect an annual fee for the collection of rubbish, and as a matter
of convenience to bill for the fee on the annual real estate bill,
so long as it is not considered and treated as a real estate tax.

March 6, 1970

OPINION NO. 12

Honorable Corley Thompson, Jr.
Representative, 41st District
35 Rosemont
Webster Groves, Missouri 63119



Dear Mr. Thompson:

This is in reply to your request for an official opinion of
this office concerning the question whether the City of Brentwood
can legally impose an annual charge on property owners for rubbish
collection service and further whether such fee can be collected on
the annual bill for real estate taxes.

The ordinance in question reads in part as follows:

"SECTION 1. For the purpose of defraying the
expenses of the collection, removal and dis-
posal of garbage and rubbish as provided in
Ordinance No. 1859, and the agreement authorized
thereunder, charges per year to property owners
are authorized and directed to be collected from
the owners of the premises and others covered by
the terms of said Ordinance No. 1859, and the
agreement authorized thereunder, by incorporating
the amount due for garbage and rubbish collection,
removal and disposal service into the real estate
tax bill of all such property owners. It shall be
the responsibility of the City Clerk-City Adminis-
trator, or any other person in charge of the en-
forcement of this ordinance and Ordinance No. 1859,
to be responsible for the collection of such bills.
All bills for garbage and rubbish collection, re-
moval and disposal services shall be paid in like
manner as payment of real estate taxes of this City.
Said charges for garbage and rubbish collection,
removal and disposal services shall be identified
on said tax bills as a separate charge and shall be
apart from and not to be considered as a part of

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the tax levies authorized by R.S.Mo. Sec. 94.250 and Sec. 94.260."

The accumulation of garbage, trash, litter, and rubbish for a period of four days is declared by Section 3 to be a public nuisance, and a clear danger to public health.

Section 71.680, RSMo 1959, gives authority to certain size cities to protect the public health with rubbish collection and reads in part as follows:

"In addition to their other powers for the protection of the public health, each city of the second, third, or fourth class of this state, and each city having less than ten thousand inhabitants which has a special charter, may provide for the gathering, handling and disposition of garbage, trash, cinders, refuse matter and municipal waste accumulating in such cities either by itself, or by contract with others, and may pay for the same out of general revenues or by collection of charges for such service, and may do such other and further acts as are expedient for the protection and preservation of the public health, as the public health may be affected by the accumulation of trash, cinders, garbage, refuse matter and municipal waste. * * * "

Section 71.690, RSMo 1959, reads as follows:

"Such cities may pass all ordinances necessary for the carrying into effect of the powers granted in section 71.680."

We note that the City of Brentwood is a fourth class city and therefore comes under the above provisions. It is apparent that the ordinance in question was passed pursuant to the authority of Section 71.680 and Section 71.690.

It is also apparent that the purpose of the ordinance and the statutes are to provide for the collection of garbage and trash as a governmental function coming under the police power of a municipality to protect the health of the public. See *Hog Ranch v. Plagmann, Mo.*, 220 S.W.1; and *Harper v. Richardson, Mo.*, 297 S.W.141.

Under the laws in question and the cases cited the exercise of this function of collecting trash and garbage can be made exclusive by the city and it can be contracted for. Furthermore, a charge can be made for this service for the benefit of all, and the service is not solely related to the cost of an individual collection. Therefore, it is not necessary that an individual use the service before he can be required to pay. The benefit is not only from the collec-

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tion of an individual's trash but in the general protection of the health of the individual and the community through general enforcement of sanitary measures.

Therefore, it is our opinion that the ordinance and the statutes cited are not tax measures which conflict with or would be subject to Article X, Section 11(c), Constitution of Missouri, or Section 94.260, RSMo 1959. Rather, the ordinance and statutes comply with Article X, Section 11(f), Constitution of Missouri, which permits the legislature to authorize cities to impose taxes that are not ad valorem taxes. This has been done with the enactment of the ordinance and Sections 71.680 and 71.690, and, as stated, they are a proper exercise of the police power of the state and the city.

For authority in other jurisdictions see:

City of Hobbs v. Chessport, Ltd., N.M., 417 P.2d 210 (1966);
City of Glendale v. Trondsen, Cal., 308 P.2d 1;
Silver v. City of Los Angeles, 31 Cal.Rptr. 545 (1963);
Mayor and Aldermen of City of Milledgeville v. Green, Ga.,
145 S.E.2d 507 (1965);
Cassidy v. City of Bowling Green, Ky., 368 S.W.2d 318 (1963);
City of Lake Charles v. Wallace, La., 170 So.2d 654.

We see no prohibition, however, to putting this collection fee on the annual bill for real estate taxes as a matter of convenience in billing and collecting the fee so long as it is not considered and treated the same as a real estate tax.

CONCLUSION

It is the opinion of this office that the City of Brentwood has the authority under Sections 71.680 and 71.690, RSMo, to charge and collect an annual fee for the collection of rubbish, and as a matter of convenience to bill for the fee on the annual real estate bill, so long as it is not considered and treated as a real estate tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General