September 23, 1974

OPINION LETTER NO. 312
Answer by Letter - Klaffenbach

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312

Honorable Kenneth J. Rothman
State Representative, District 77
309 State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Rothman:

This letter is in response to your question asking:

> "Whether under Revised Statutes of Missouri, Section 260.200 to 260.245, a city or county may levy a charge for the collection and disposal of solid waste on a person or household which makes no use of the services provided for collection and disposal of solid wastes."

You have also stated that some cities and counties take the position that service charges can be levied irrespective of whether or not the residents desire the service. We believe that the wording of the solid waste disposal law indicates that such was the legislative intent.

Since your question deals with all counties and all cities it is somewhat difficult to give you a concise answer.

It is our understanding of the legislative intent respecting the solid waste disposal law, Sections 260.200, RSMo Supp. 1973 et seq., that, among other things, the law was intended to eliminate the practice of numerous individuals of using unorthodox and unsightly as well as unsanitary means of disposal of refuse. The prevalence of such practices had become quite visible to all concerned.

The legislature provided the following exception in Section 260.220.2(6), with respect to disposal plans:

"Every plan shall:

* * *

(6) Allow private solid waste disposal services to continue to operate in unincorporated area (sic) of counties so long as such services are operated in a manner consistent with the policies and standards established under sections 260.220 to 260.245;"

Our previous interpretation with respect to this latter provision, as well as other features of the act in question, is set forth in our Opinion No. 42-1974, copy enclosed.

In addition, in Section 260.215.3, the legislature provided:

"Any city or county may adopt ordinances, rules, regulations, or standards for the storage, collection, transportation, processing of disposal of solid wastes which shall be in conformity with the rules and regulations adopted by the board for solid waste management systems. However, nothing in sections 260.200 to 260.245 shall usurp the legal right of a city or county from adopting and enforcing local ordinances, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes equal to or more stringent than the rules or regulations adopted by the board pursuant to sections 260.200 to 260.245."

Obviously, cities had the power prior to the enactment of Sections 260.200 et seq., to provide for mandatory refuse collection.

Clearly, where a tax is levied for such service as provided for in Section 260.215 there is no more reason for distinction between taxpayers on the grounds that such taxpayers do not desire service than there is in other areas of public concern where taxes form the basis for the support of the services and where payment is not optional with the taxpayer although the use of the service in a particular case may be optional. Your question deals with service charges as opposed to taxes. However, the conclusion we reach would be reached generally on the same principles as respects taxation. That is, that in order to carry out the intent of the legislature with respect to mandatory refuse collection the cities and the counties were intended to have the authority to levy

charges on residents within their jurisdiction irrespective of whether or not such residents desired or required the service.

The only exception to this is where the service is provided by a private disposal service in unincorporated areas of the counties within the meaning of Section 260.220.2(6), above, in which case duplicate charges should not be levied by the county.

We also enclose Opinion Letter No. 63-1973, in which we held that a city could disconnect water services as a means of collectint a bill owed the city for refuse collection, and Opinion No. 12-1970, in which we noted that such collection service is for the public welfare and that it is not necessary that an individual use the service before he can be required to pay.

AMENDED November 18, 1977.

The reference in the first sentence to Opinion 63-1973, in the preceding paragraph, is no longer the law in view of the enactment of subsection 5 of Section 260.215, RSMo Supp. 1975, which provides that no city or county shall withhold or authorize the withholding of any other utility service for failure to collect the separately stated service charge.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 42-1974
Op. No. 12-1970