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RC.
STATE OF NEBRASKA
OFFICIAL
OCT 19 1993
DEPT. OF JUSTICE

DATE: October 13, 1993

SUBJECT: Municipal Utility Billings

REQUESTED BY: Senator Floyd P. Vrtiska
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have asked several questions regarding charges by municipalities for utilities. Your first question is whether it is permissible under current statute for municipalities with combined utility ordinances to combine the fees charged for garbage hauling services with those charged for utilities such as water and/or electricity. We have found no current statutes that prohibit combining bills for utilities with garbage hauling services.

You next ask if it is permissible under current statute for municipalities with combined utility ordinances to disconnect a utility service for nonpayment of fees for services such as garbage hauling which are combined with that utility's billing. There are several statutes which currently exist that are addressed to the proper methods of notice and hearing when a utility seeks to disconnect services. None of these statutes specifically address the question which you have asked. However, in *Garner v. City of Aurora*, 149 Neb. 295, 30 N.W.2d 917 (1948), the Nebraska Supreme Court determined that a municipal public service could not attempt to collect a delinquent garbage disposal bill by shutting off the water supply of the patron. *See also* 64 Am. Jur. 2d *Public Utilities* § 18.

Your final question is whether garbage hauling is considered to be a "utility" under current statute the same as water and electricity. Nebraska statutes do not generally define utilities

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except as it relates to unclaimed property. Under the definition of utilities in the unclaimed property section, Neb. Rev. Stat. § 69-1301(h) (1990), garbage services would not be included as a utility. However, it has been included in the definition of utility in cases in several other states. In ***Southern Liquid Gas Company v. City of Dothan***, 44 S.2d 744, 747, 253 Ala. 350 (1950), the court determined that an essential element of a "utility" is that it is both serving and is constituted to serve all inhabitants in the area who comply with reasonable conditions. In ***City of Wichita Falls v. Kemp Hotel Operating Company***, 162 S.W.2d 150 (Tex. 1942), it was determined that the public service of ridding premises of waste and equipment used in connection therewith constituted a public utility, and, therefore, the city's contract with an individual for removal and disposition of garbage was held to constitute a "public utility."

In summary, there is no prohibition under current statutes for municipalities with combined utility ordinances to combine the fees charged for garbage hauling services with those charged for utilities such as water and/or electricity. Additionally, under Nebraska case law, a municipality may not disconnect a utility service such as water or electricity for nonpayment of garbage hauling fees. Finally, Nebraska statutes do not currently define garbage services as a utility but case law from some states has included garbage service as a utility.

Sincerely,

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28-03-14.op

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:

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