

**Opinion No. 56-6421**

April 16, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

We have your letter of March 29th in which you request an opinion from this office as to whether under the provisions of Section 14-32-6, N.M.S.A., 1953, the city is authorized to make an assessment against the real estate and cause such assessment to be a lien upon such real estate when the same is not paid.

We are of the opinion that the municipality is authorized a garbage collection charge to become lien upon the real estate by following the procedures outlined in Section 14-32-6 through Section 14-32-10, inclusive.

Section 14-32-6, provides two circumstances under which an assessment can be made against property, in the first instance, where a person owning or controlling the property shall fail or refuse to pay the amount required to be paid for the removal of garbage, and second, where garbage is left or deposited on premises, and such person refuses to remove the same within forty-eight hours after it has been left on the premises. In other words, if either of these events occur, an assessment can be made against the property which eventually will mature into a lien against such property by following the procedure outlined in the subsequent sections, namely, 14-32-7 through 14-32-10.

To place any other construction upon this particular section of the statute would, in effect, actually defeat the general purposes of Section 14-32-1 through 14-32-11, inclusive.

If the city was limited to a lien upon the property of an owner who refused to dispose of his garbage, only after he was given a forty-eight hour notice, it would be impossible for the city, under such circumstances, to have a uniform system of collection of garbage, for all owners could refuse to pay the assessment required by the municipality for the purposes of collecting garbage under a uniform system. This type of construction upon Section 14-32-6, would in effect, make each person a garbage disposal officer of the city. The evident purpose for garbage and waste collection was to grant such municipalities broad powers, and as part of those powers we are of the opinion that Section 14-32-6, authorizes the city to cause garbage charges to be made a lien upon the real property where the owner thereof fails to pay the fixed charges.

Trusting we have answered your inquiry, we remain

By: Paul L. Billhymer

Assistant Attorney General