

Judge sides with city on trash lawsuit

By Linda Stinnett

Informer staff writer

A Sedgwick County District Court judge ruled Thursday in favor of the city in a lawsuit over Derby's decision to franchise trash service.

The suit was filed in September 2009 by Janice Baston and Matthew Joyce, on behalf of all 436 people who signed a petition asking the city council to repeal its decision to franchise the trash service or put the matter to a vote of

the people. The city council declined to take any action when the petition was presented after it received legal advice that the state's initiative and referendum laws did not cover the franchise decision.

Judge Joseph Bribiesca ruled that the ordinance which the city adopted for the trash system was administrative in nature. Administrative matters are not valid reasons to bring an initiative and referendum vote.

Derby city attorney Phil Alexander said the Kansas Supreme Court established detailed

guidelines for such cases.

"We were fortunate, I think that's fair to say, the Kansas Supreme Court issued an opinion on initiative and referendum about a year and a half ago that went through a real detailed analysis of how to apply that statute," Alexander said.

Alexander said the judge's analysis was lengthy, but in his conclusion he agreed with

they had no standing to raise the claims.

The city's attorneys, Bribiesca and Mark Rouleau, attorney for Baston and Joyce, will work to create a journal entry from the judge's ruling. From the date that entry is filed, which will likely take at least a week, Baston and Joyce have 30 days to file an appeal with the Kansas Court of Appeals.

Rouleau said Friday they have not decided whether to pursue an appeal.

"I still disagree with the decision," he said. "We are considering our options on what we can do."

City manager Kathy Sexton said the city is confident that the trash program started in December 2009 is not only popular with the community but is fair and stands up to state law.

the city's stance and said the challenge to the ordinance was not valid.

"It went into considerable detail on how to analyze that question," Alexander said.

Bribiesca also ruled in the city's favor on subsidiary claims in the lawsuit, including the allegations that the franchise fee was an illegal excise tax.

Alexander said the court determined Baston and Joyce did not qualify to file those motions. Under state law if a person can show they are adversely impacted above and beyond the masses, specific claims can be made.

In this case, Bribiesca said

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