

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-058 was modified by
1988 Op. Att'y Gen. No. 88-009.

OPINION NO. 85-058**Syllabus:**

1. A board of county commissioners which has established a county garbage and refuse disposal district has no authority to pass an ordinance requiring collectors of solid waste to be licensed.
2. A board of county commissioners which has established a county garbage and refuse disposal district is without authority to pass an ordinance requiring all solid waste collected or transported in the county to be disposed of at the single county approved landfill where the county commissioners have not adopted a general plan involving the issuance of revenue bonds for improvements for solid waste disposal.

To: Richard A. Yoss, Monroe County Prosecuting Attorney, Woodsfield, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 17, 1985

I have before me your request for my opinion in which you ask whether the adoption of the following ordinance is within the authority of the board of county

September 1985

commissioners. The proposed ordinance states:

No person, except collectors duly authorized by the County licensed pursuant to law, shall collect or remove any solid waste accumulating within the County. . .or use the roads, streets, avenues, and alleys of the County. . .for the purpose of collecting or transporting the same. All licenses granted to such private haulers and all contracts or other forms of authorization of duly authorized collectors shall require that all solid waste collected and transported under authority of such license, if acceptable for landfill disposal, be disposed of at a County approved landfill.

This ordinance generally prohibits any person, other than a licensed collector, from collecting or removing solid waste from within the county and transporting such waste over the roads in the county. The ordinance further provides that all waste collected be taken to a county approved landfill.

Boards of county commissioners are creatures of statute which may exercise only those powers expressly granted by statute and those necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Consequently, the authority of the board of county commissioners to pass the above ordinance must be either expressly granted by statute or necessarily implied from an express statutory provision.

Your first question concerns the authority of a board of county commissioners to license garbage and refuse collectors. Specifically, the first clause of the proposed ordinance states that: "No person, except collectors duly authorized by the County licensed pursuant to law, shall collect or remove any solid waste accumulating within the County. . . ."

R.C. 343.01 through R.C. 343.99 set forth the powers of a board of county commissioners with respect to garbage and refuse disposal. See State v. Max W. Fenberg & Sons, Inc., 52 Ohio App. 2d 203, 369 N.E.2d 12 (Wyandot County 1976). R.C. 343.01(A) authorizes a board of county commissioners to establish and maintain one or more garbage and refuse disposal districts within the county. Pursuant to R.C. 343.01(B), the county commissioners of two or more counties may establish and maintain a joint garbage and refuse disposal district. Since your letter does not state that Monroe County has joined a joint garbage and refuse disposal district, I will limit this opinion to a discussion of the authority of the county commissioners with respect to a county garbage and refuse disposal district.

R.C. 343.08(A) states, in pertinent part:

Where a county or joint district owns or operates a garbage and refuse disposal, refuse recycling, or resource recovery facility, either without a collection system, or in conjunction therewith, the board of county commissioners or board of directors. . .may contract with any public authority or person for the collection of garbage and refuse in any part of any district for disposal in any garbage and refuse disposal, refuse recycling, or resource recovery facility, or may lease any such facility to any public authority or person. (Emphasis added.)

Under the provisions of this section, where a county district owns or operates a garbage and refuse disposal, refuse recycling, or resource recovery facility, the board of county commissioners may, among other things, contract with any person for garbage and refuse collection for disposal in any garbage and refuse disposal, refuse recycling, or resource recovery facility. Further, the board may lease any such facility to any person. The authority to so contract and lease does not, however, include the authority to license collectors.

R.C. 343.01 provides in part, as follows:

(C)...A board of county commissioners of a county district...may acquire, by purchase or lease, construct, improve,

enlarge, replace, maintain, and operate such garbage and refuse collection systems within their respective districts and such garbage and refuse disposal, refuse recycling, or resource recovery facilities within or outside their respective districts as are necessary for the protection of the public health. . . .

. . . .
(F) A board of county commissioners may make, publish, and enforce rules for the construction, maintenance, protection, and use of garbage and refuse collection and disposal, refuse recycling, or resource recovery facilities. . . . (Emphasis added.)

Pursuant to this statute, the board of county commissioners may acquire and operate garbage and refuse collection systems, and may regulate facilities, but there is no specific grant of authority to the board to license collectors.

In State v. Elliott, 32 Ohio App. 2d 144, 289 N.E.2d 183 (Monroe County 1971), the court of appeals addressed the question whether the rule-making authority of the board of county commissioners under R.C. 343.01(A) (currently at R.C. 343.01(F)) authorized the board to require licenses for the collection and transportation of solid wastes within a county solid waste district. The court noted that R.C. 343.01(B) (currently at R.C. 343.01(G)) provided for the imposition of fines for violation of the board's rules, and, therefore, the rule-making powers of the board should be strictly construed. The court concluded that the board's rule-making power under former R.C. 343.01(A) did not include the power to license. Although the court in State v. Elliott examined the board's authority to require licenses for the collection and transportation of solid waste only under the provisions of former R.C. 343.01(A), I am unaware of any other statutory provision which grants such licensing authority to a board of county commissioners. In the absence of a statute authorizing a board of county commissioners to so license the collection and transportation of solid wastes, I must conclude that a board of county commissioners has no such authority.

The second part of the proposed ordinance requires that "all solid waste. . . be disposed of at a county approved landfill." Although the meaning of this requirement is unclear, if this clause intends merely to authorize the board of county commissioners to approve the specifications for a landfill, then this requirement is, in certain circumstances, permissible pursuant to R.C. 343.01(F), which states, in part: "No garbage and refuse disposal, refuse recycling, or resource recovery facility shall be constructed in any county or joint district outside municipal corporations by any person until the plans and specifications for such facility have been approved by the board of county commissioners or directors having jurisdiction." See North Sanitary Landfill, Inc. v. Board of County Commissioners, 52 Ohio App. 2d 167, 369 N.E.2d 17 (Montgomery County 1976). It is my understanding, however, that the above-quoted clause of the proposed ordinance is intended to require that all the solid waste collected within the county be disposed of at the only landfill located in the county. Although you have not so stated in your letter, I assume that the landfill has been approved by the county.

In State v. Max W. Fenberg & Sons, Inc., the court considered whether a board of county commissioners is empowered to adopt a regulation requiring that all garbage and refuse generated within the county be disposed of in a landfill owned by a private operator and operated under a contract with the county. The court examined the provisions of R.C. Chapter 343 and concluded that the adoption of such regulation was beyond the board's authority. The court stated, 52 Ohio App. 2d at 209, 369 N.E.2d at 16:

In our opinion, particularly in consideration of these various statutory provisions, the legislature contemplated private as well as governmental enterprise and did not intend that a garbage and refuse monopoly should exist in a county unless the same were the result of a general plan approved by the commissioners resulting in the

issuance of revenue bonds for improvements requiring "captive" customers for the production of income for their retirement.¹¹ It is apparent that except for an operation pursuant to such general plan and pursuant to the issuance of revenue bonds it was intended by the General Assembly that the freedom to contract both for the service and for the rates for service should exist between the board of commissioners and prospective users including boards of education, municipalities, and townships both within and without the county. A monopoly mandating the use of the landfill by all garbage and refuse producers within the county at a rate fixed unilaterally by the county commissioners and paid directly to the landfill operator is wholly inconsistent with such freedom of contract. Moreover, the fact that the General Assembly contemplated that garbage and refuse be brought in from another county¹² indicates that except where a general plan with improvements financed by revenue bonds should be involved, there should be freedom of movement of such garbage and refuse from one county to another.

Accordingly, we are of the further opinion that except for the general plan situation the legislative intent with respect to bestowing on boards of county commissioners the authority to regulate the "use of garbage and refuse collection and disposal facilities" is to permit the regulation of the manner in which such facilities are used and not to compel their use. (Footnotes added.)

In your letter of request you state that the county has no interest in adopting a general plan involving revenue bonds for any improvements. Thus, I conclude it is beyond the authority of the board of county commissioners to pass the second section of the proposed ordinance.

In specific answer to your question it is my opinion, and you are advised that:

1. A board of county commissioners which has established a county garbage and refuse disposal district has no authority to pass an ordinance requiring collectors of solid waste to be licensed.
2. A board of county commissioners which has established a county garbage and refuse disposal district is without authority to pass an ordinance requiring all solid waste collected or transported in the county to be disposed of at the single county approved landfill where the county commissioners have not adopted a general plan involving the issuance of revenue bonds for improvements for solid waste disposal.

¹ See generally R.C. 343.01(E); R.C. 343.07 (concerning issuance of bonds to pay all or part of the cost of acquisition, construction, or repair of any improvement provided for in R.C. Chapter 343); R.C. 343.08 (authorizing the board of county commissioners of a county garbage and refuse disposal district to fix reasonable rates or charges to be paid by owners of premises to which the collection or disposal of garbage and refuse is made available); North Sanitary Landfill, Inc. v. Board of County Commissioners, 52 Ohio App. 2d 167, 169, 369 N.E.2d 17, 19 (Montgomery County 1976) ("the legislature provided for the creation of the [garbage and refuse disposal] district, the issuance of public bonds and the method for repayment by all to whom the service is available. . . . In effect, the legislature established a public utility to be operated by the county commissioners"); 1958 Op. Att'y Gen. No. 3144, p. 718 (syllabus, paragraph one).

² See generally R.C. 343.02.