

OPINION NO. 71-066

Syllabus:

A board of township trustees may enter into a contract with a board of county commissioners under which the service charges, assessed by the township against the users of a waste disposal service provided by the township under Sections 505.27 through 505.37, Revised Code, are to be collected by the county, provided such charges are ultimately paid over to the township clerk and deposited by him in "the waste collection fund".

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, October 6, 1971

I have before me your request for my opinion, which reads as follows:

"May a board of township trustees contract with a board of county commissioners whereby the board of county commissioners would perform the collection of service charges for waste disposal service rendered under §505.27 through 505.33, O.R.C.?"

Your letter explains that the township wishes to create waste disposal districts under Section 505.28, Revised Code; that it proposes to establish charges, under Section 505.29, Revised Code, for those who benefit by such waste disposal services, instead of levying a tax which could be done as an alternative under the same Section; and that it would be much more economical for the township to contract with the board of county commissioners to collect the charges through its sanitary engineering department than for the township clerk to collect them directly as Section 505.31, Revised Code, would appear, at first glance, to provide.

Section 505.27, Revised Code, provides as follows:

"Boards of township trustees, either severally or jointly, may provide, maintain and operate facilities for the collection and disposal of garbage and refuse or may enter into written contracts with the proper municipal or county authorities or with independent contractors for such services for the township, or for a waste disposal district as provided in Section 505.28 of the Revised Code."

Section 505.28, Revised Code, provides, in pertinent part, as follows:

"The board of township trustees may create a waste disposal district under sections 505.27 to 505.33 * * *.

"The territory to be created into a waste disposal district shall consist of an area in which

at least two-thirds of the residents reside on lots no greater in area than one acre. Each district shall be given a name, and the entire cost of any necessary equipment and labor shall be apportioned against each district by the respective boards."

Section 505.29, Revised Code, provides, in pertinent part, as follows:

"The board of township trustees may * * * levy a sufficient tax * * * upon all taxable property in a waste disposal district to provide and maintain waste disposal service.

"In the alternative the board * * * may * * * establish equitable charges * * * for the use and benefit of such service, by every person * * * whose premises are so served. * * *"

Section 505.31, Revised Code, provides, in pertinent part, as follows:

"The township clerk shall collect the service charges for waste disposal service and administer them under rules and regulations established by the board of township trustees. All such moneys shall be kept in a separate fund designated as 'the waste collection fund,' and shall be appropriated and administered by the board. * * *"

To summarize briefly, these sections of the Revised Code provide that a township may create waste disposal districts; that it may provide and operate facilities for collection and disposal of the waste, and establish charges to be paid by those who benefit from such service; and that the charges should be collected and administered by the township clerk. The question is whether the clerk must collect the charges directly from the users of the service, or whether the township may contract with the board of county commissioners to collect the charges initially and pay them over to the township clerk.

I see nothing in the statutory scheme to prohibit such a contract between the board of township trustees and the board of county commissioners. Section 307.15, Revised Code, provides, in pertinent part, as follows:

"The board of county commissioners may enter into an agreement with the legislative authority of any * * * township * * * and such legislative authorit[y] may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render; * * *."

It is clear that a township is a "contracting subdivision" within

the meaning of Section 307.15, supra (cf. Section 307.14, Revised Code, for the definition of the term as used here); that the township is authorized to collect the charges for waste disposal through its agent, the township clerk; and that the township can contract with the board of county commissioners to perform any function the township itself could perform through its clerk. It is true that the township clerk must eventually "collect" the charges and deposit them in "the waste collection fund", Section 505.31, supra, but the statute is silent as to the method of collection. Its mandate is fulfilled as long as the clerk ultimately receives the charges in his office and deposits them in the proper fund.

This conclusion is bolstered by the fact that, as your letter states, the initial collection process can be performed much more economically by the county through its sanitary engineering department, and by the further fact that the township, instead of providing the collection and disposal services itself, could have contracted with the county to provide such services for the waste disposal district. Section 505.27, supra.

In specific answer to your question it is my opinion, and you are so advised, that a board of township trustees may enter into a contract with a board of county commissioners under which the service charges, assessed by the township against the users of a waste disposal service provided by the township under Sections 505.27 through 505.37, Revised Code, are to be collected by the county, provided such charges are ultimately paid over to the township clerk and deposited by him in "the waste collection fund".