

OPINION NO. 89-054**Syllabus:**

1. The solid waste plan of a solid waste management district must be approved or ordered to be implemented under R.C. 3734.55 or R.C. 3734.56 by the Director of the Ohio Environmental Protection Agency before a township within the district may levy fees upon the disposal of solid wastes pursuant to R.C. 3734.57(C).
2. A township is not required to wait for the actual implementation of a plan that has been approved by the Director of the Ohio Environmental Protection Agency before levying fees upon the disposal of solid wastes pursuant to R.C. 3734.57(C).
3. On the thirtieth day after the adoption of a resolution by a board of township trustees levying fees pursuant to R.C. 3734.57(C), the township may commence collecting such fees.

To: Daniel R. Gerschutz, Putnam County Prosecuting Attorney, Ottawa, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 25, 1989

I have before me your request for my opinion concerning the levy of fees on a solid waste disposal facility under R.C. 3734.57. You provide the following facts. Putnam County has been granted permission by the Director of the Ohio Environmental Protection Agency to form a single county solid waste management district. The policy committee for the district has been formed and is devising a solid waste management plan for the district. Palmer Township, which is in this district, has a privately owned and managed solid waste disposal facility located within it. The Board of Township Trustees of Palmer Township would like to adopt immediately a resolution levying a fee of not more than twenty-five cents per ton on solid waste disposed of at the facility, as provided in R.C. 3734.57(C). You ask my opinion as to when the township may commence collecting these fees. You also indicate that there has been disagreement as to whether the township is authorized to levy these fees before the district's solid waste plan has been approved.

As a preliminary matter, I note that R.C. 3734.57 contains several provisions dealing with the levy of fees on the disposal of solid wastes at a solid waste disposal facility. R.C. 3734.57(A) levies fees on the disposal of solid wastes for the purpose of paying various costs incurred by the state in relation to regulating or cleaning up wastes. R.C. 3734.57(A) further provides that these fees shall be collected by the owner or operator of each facility, remitted to the Director of the Environmental Protection Agency, and credited to the state hazardous waste facility management

fund and the state hazardous waste clean-up fund. R.C. 3734.57(B) authorizes the solid waste management policy committee of a district¹ to levy fees on the disposal of solid wastes for various purposes, including preparing, revising, and implementing the solid waste management plan of the district. R.C. 3734.57(B) specifically authorizes such fees to be levied prior to the approval of a district's waste management plan. Fees levied pursuant to R.C. 3734.57(B) are to be forwarded to the board of county commissioners or board of directors of the district. R.C. 3734.57(E).

R.C. 3734.57(C), which you specifically inquire about, authorizes the imposition of fees by a municipality or township. R.C. 3734.57(C) provides:

For the purposes of defraying the added costs to a municipal corporation or township for maintaining roads and other public facilities and for providing emergency and other public services, and compensating a municipal corporation or township for reductions in real property tax revenues due to reductions in real property valuations resulting from the location and operation of a solid waste disposal facility within the municipal corporation or township under the solid waste management plan or amended plan of the county or joint solid waste management district approved or ordered to be implemented under section 3734.55 or 3734.56 of the Revised Code, a municipal corporation or township in which such a solid waste disposal facility is located may levy a fee of not more than twenty-five cents per ton on the disposal of solid wastes at a solid waste disposal facility located in the district and within the boundaries of the municipal corporation or township regardless of where the wastes were generated.

The legislative authority of a municipal corporation or township may levy fees under this division by enacting an ordinance or adopting a resolution establishing the amount of the fees. Upon so doing the legislative authority shall mail a certified copy of the ordinance or resolution to the board of county commissioners or directors of the county or joint solid waste management district in which the municipal corporation or township is located or, if a regional solid waste management authority has been formed under section 343.011 [343.01.1] of the Revised Code, to the board of trustees of that regional authority, the owner or operator of each solid waste disposal facility in the municipal corporation or township that is required to collect the fee by the ordinance or resolution, and the director of environmental protection. Although the fees levied under this division are levied on the basis of tons as the unit of measurement, the legislative authority, in its ordinance or resolution levying the fees under this division, may direct that the fees be levied on the basis of cubic yards as the unit of measurement based upon a conversion factor of three cubic yards per ton generally or one cubic yard per ton for baled wastes.

Collection of the fee shall commence on the thirtieth day after the effective date of the ordinance or adoption of the resolution.

See also R.C. 3734.57(E) (fees levied pursuant to R.C. 3734.57(C) are to be forwarded to the treasurer of the municipality or clerk of the township); R.C. 3734.57(D) (listing exclusions from fees levied pursuant to R.C. 3734.57(A), (B) and (C)). *See generally* 1988 Op. Att'y Gen. No. 88-099 (discussing the levy of fees on the disposal of hazardous and solid wastes).

¹ R.C. 3734.54(B) provides that the solid waste management policy committee of a county district shall consist of one representative from each of the following: the board of county commissioners, the municipality having the largest population, the townships within the county, the health district with the largest territorial jurisdiction, and the public in general. The representative for the townships is chosen by a majority of all boards of township trustees within the county. R.C. 3734.54(B)(3).

You indicate that there is some question as to whether the solid waste plan of the solid waste management district must be approved by the Ohio Environmental Protection Agency and ratified by the necessary legislative authorities before the township trustees may levy fees under R.C. 3734.57(C). I direct your attention to the language in R.C. 3734.57(C) that authorizes fees to defray costs and to compensate for reductions in property valuations resulting from the location and operation of a facility within the township "under the solid waste management plan or amended plan of the county or joint solid waste management district approved or ordered to be implemented under section 3734.55 or 3734.56 of the Revised Code..." This language clearly requires that the solid waste plan of the district be approved or ordered to be implemented before a township or municipality within the district may levy the fees. It is a well-established rule of statutory construction that every part of a statute's language is to be given effect. See R.C. 1.47(B); *Scott v. Reinier*, 58 Ohio St. 2d 67, 388 N.E.2d 1226 (1979); *State ex rel. Bohan v. Industrial Commission*, 147 Ohio St. 249, 70 N.E.2d 888 (1946). I conclude, therefore, that the solid waste plan of a solid waste management district must be approved or ordered to be implemented under R.C. 3734.55 or R.C. 3734.56 before a township within the district may levy fees upon the disposal of solid wastes pursuant to R.C. 3734.57(C).

My conclusion is reinforced by an examination of R.C. 3734.57(B), which provides that "[p]rior to the approval of the solid waste management plan of the district under section 3734.55 of the Revised Code, the solid waste management policy committee of a district may levy fees under this division by adopting a resolution establishing the proposed amount of the fees." (Emphasis added.) It is significant that while subdivision (B) of R.C. 3734.57 specifically authorizes fees to be levied before the approval of a plan, subdivision (C) contains no such authorization. It is apparent, therefore, that if the General Assembly had intended to permit the levy of fees under R.C. 3734.57(C) before the district's plan has been approved, it could easily have found the means to express such authorization, having used appropriate language to that effect in another division of R.C. 3734.57. Cf. *Lake Shore Electric Ry. Co. v. PUJO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the General Assembly intended a term to have a particular meaning, it could easily have found language to express that purpose, having used such language in other connections). Thus, as provided in R.C. 3734.57(C), the solid waste management plan of a district must be approved or ordered to be implemented under 3734.55 or 3734.56 before the Board of Trustees of Palmer Township may levy fees upon the disposal of solid wastes.

You have also asked whether *implementation* of the solid waste management plan is necessary before levying fees. Before addressing this issue I find it helpful to review the statutory framework governing the approval of solid waste management plans. As discussed above, R.C. 3734.57(C) requires that the district's plan be approved or ordered to be implemented under R.C. 3734.55 or R.C. 3734.56. R.C. 3734.55 details the procedure to be followed in seeking the approval of a district's plan by the Director of the Ohio Environmental Protection Agency. This approval, however, cannot be obtained before the necessary legislative authorities have ratified the plan. R.C. 3734.55. In a single county district, these legislative authorities are the board of county commissioners and the legislative authorities of a combination of municipalities and townships comprising at least sixty per cent of the district's population, provided that this combination includes the district's most populous municipality. R.C. 3734.55(B). After certain procedures have been followed, including the foregoing ratification, the Director of the Environmental Protection Agency may approve the draft plan pursuant to R.C. 3734.55(C). If the district fails to obtain the Director's approval of the draft plan, the Director must prepare a plan for the district and issue an order directing that this plan be implemented. R.C. 3734.55(D). R.C. 3734.56, concerning the preparation and submission of amended plans after an initial plan has been approved or ordered to be implemented, does not affect the question at hand. Thus, after the solid waste management plan of a solid waste district has been ratified by the necessary legislative authorities and approved by the Director of the Ohio Environmental Protection Agency pursuant to R.C. 3734.55, a township located within the district may levy fees upon the disposal of solid wastes pursuant to R.C. 3734.57(C).

You state that the policy committee of the district in which Palmer Township is located is devising a solid waste management plan, and that the plan is about one year from implementation. I note that although the township is precluded from levying a fee pursuant to R.C. 3734.57(C) until the district's plan has been approved or ordered to be implemented under R.C. 3734.55 or R.C. 3734.56, the township does not have to wait for *implementation* of the plan before imposing a fee. Implementation is subsequent to approval of the plan by the Director or an order to implement by the Director. *See* R.C. 3734.55(C)(4) (after approval of a plan by the Director of the Environmental Protection Agency, the plan shall be implemented in compliance with the implementation schedule in the approved plan). Thus, R.C. 3734.57(C) requires a plan that has been approved or ordered to be implemented, but does not require a plan to be actually implemented before fees are levied.

Once such approval or order to implement is in place, the board of township trustees may levy fees, as provided in R.C. 3734.57(C), by adopting a resolution establishing the amount of the fees and mailing a certified copy of the resolution to the board of county commissioners of the county solid waste management district, to the owner of the solid waste disposal facility, and to the Director of the Environmental Protection Agency. As provided in the last sentence of R.C. 3734.57(C), the township may begin collecting the fees on the thirtieth day after the adoption of the resolution.

Accordingly, it is my opinion and you are advised that:

1. The solid waste plan of a solid waste management district must be approved or ordered to be implemented under R.C. 3734.55 or R.C. 3734.56 by the Director of the Ohio Environmental Protection Agency before a township within the district may levy fees upon the disposal of solid wastes pursuant to R.C. 3734.57(C).
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