

OPINION NO. 89-020**Syllabus:**

1. In order for a board of county commissioners of a county with a population of less than one hundred twenty thousand to apply for an exemption under R.C. 3734.52(C)(1), it is not necessary that the county own a solid waste facility.
 2. A county that has established a single county solid waste management district may dissolve its single district and become a member of a joint solid waste management district, provided that the conditions set forth in R.C. 343.01(B) and R.C. 3734.52(E) are fulfilled.
 3. A county may withdraw from a joint solid waste management district and establish its own single county district, provided that the conditions set forth in R.C. 343.01(B) and R.C. 3734.52(E) are fulfilled.
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To: Stephen M. Stern, Jefferson County Prosecuting Attorney, Steubenville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1989

I have before me your request for my opinion concerning the formation of solid waste management districts. The provisions governing the formation of solid waste management districts are set forth in R.C. Chapter 343 and R.C. Chapter 3734. Under 3734.52, each board of county commissioners is required to establish a single county solid waste management district or to participate in establishing a joint solid waste management district with one or more other boards of county commissioners. I have rephrased your questions as follows:

1. If a county has a population of less than one hundred thousand, must it own a solid waste facility in order to qualify for formation of a single county solid waste management district under R.C. 3734.52(C)(1)?
2. If a county has established a single county solid waste management district, is the county precluded from dissolving its single district form and becoming a member of a joint district?
3. If a county is a member of a joint solid waste management district, is the county precluded from withdrawing from the joint district and establishing its own single county district?

Turning to your first question, I note that R.C. 3734.52(B) and R.C. 343.01(A) require that each waste management district have a population of at least one hundred twenty thousand, except that a single county district may have a smaller population if the board of county commissioners obtains an exemption pursuant to R.C. 3734.52(C). You ask whether a county with a population under one hundred twenty thousand must own a solid waste facility in order to qualify for exemption under R.C. 3734.52(C)(1). R.C. 3734.52(C)(1) provides in pertinent part:

The board of county commissioners of a county with a population of fewer than one hundred twenty thousand in which one or more solid waste facilities are located that have sufficient remaining capacity to dispose of all solid wastes generated within the county, or that has entered into a firm agreement that provides for the disposal of all solid wastes generated within the county whether within or outside the county or state, for a period of not less than ten years after the effective date of this section may apply to the director for an exemption from the requirement under division (B) of this section that each district have a population of at least one hundred twenty thousand. The exemption application shall be accompanied by the board's certification and demonstration of access to sufficient solid waste management facility capacity to provide for the disposal of the solid wastes generated in the county during that ten-year period.

Thus, in order to apply for exemption, the county must have one or more facilities with sufficient capacity located within it or must have a firm agreement providing for disposal. In either case, the board of county commissioners must demonstrate to the Director of Environmental Protection that the county has "access to sufficient solid waste management facility capacity" and must obtain the approval of the Director for the exemption. I find no language in this statute which indicates that the General Assembly intended to require that the county itself own a solid waste facility. Indeed, such a requirement would be illogical in view of the fact that R.C. 3734.52(C)(1) authorizes an application for exemption if the county has a firm agreement for disposal either within or outside the county. Such an agreement presumably would be with an entity other than the county and would provide for waste disposal by a facility that is not owned by the county. I conclude, therefore, that under R.C. 3734.52(C)(1), a county is not required to own a solid waste facility in order to qualify for formation of a single county solid waste management district.

In your second question, you ask whether a county that establishes a single county solid waste management district is precluded from dissolving its single district and becoming a member of a joint district. In your third question, you ask whether a county is precluded from withdrawing from a joint solid waste

management district and establishing its own single county district. The answers to these questions are found in R.C. 343.01(B), which provides in pertinent part:

A county may join an existing joint district by the adoption of a resolution by its board of county commissioners requesting membership, upon approval of the board of directors of the district, and thereafter upon submission to and approval by the director of environmental protection of the solid waste management plan of the joint district formed by the joinder of the county and joint districts under section 3734.55 of the Revised Code....A county may withdraw from a joint district by the adoption of a resolution by its board of county commissioners ordering withdrawal and upon submission to and approval by the director of the solid waste management plan or amended solid waste management plan of each county and joint district that results from the withdrawal under section 3734.55 or 3734.56 of the Revised Code. (Emphasis added.)

Thus, R.C. 343.01(B) authorizes a county to join an existing joint waste management district and to withdraw from a joint district and establish a single county district upon approval of the board of county commissioners and the Director of Environmental Protection. Additional requirements are imposed on such joinder or withdrawal in R.C. 3734.52(E). R.C. 3734.52(E)(1) requires each district resulting after withdrawal of a county from a joint district to have a population of at least one hundred twenty thousand. R.C. 3734.52(E)(2) provides that a joinder to or withdrawal from a district shall not be final until the initial solid waste management plan of each newly created district and the amended plan of each remaining district is approved by the Director of Environmental Protection. R.C. 3734.52(E)(2) also sets forth a time schedule for submitting plans to the Director. R.C. 3734.52(E)(3) addresses the composition of the solid waste management policy committees of the proposed resulting districts. I conclude, therefore, that a county may dissolve its single county solid waste management district and become a member of a joint solid waste management district, provided that the conditions set forth in R.C. 343.01(B) and R.C. 3734.52(E) are fulfilled. These statutes also authorize a county to withdraw from a joint solid waste management district and establish its own single county district, provided that the statutory conditions are fulfilled.

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

1. In order for a board of county commissioners of a county with a population of less than one hundred twenty thousand to apply for an exemption under R.C. 3734.52(C)(1), it is not necessary that the county own a solid waste facility.
2. A county that has established a single county solid waste management district may dissolve its single district and become a member of a joint solid waste management district, provided that the conditions set forth in R.C. 343.01(B) and R.C. 3734.52(E) are fulfilled.
3. A county may withdraw from a joint solid waste management district and establish its own single county district, provided that the conditions set forth in R.C. 343.01(B) and R.C. 3734.52(E) are fulfilled.