

**OPINION NO. 72-097****Syllabus:**

1. When a board of county commissioners has accepted the request of a municipal corporation to be included in a garbage and refuse disposal district, validly created pursuant to Chapter 343, Revised Code, and when the disposal facility has been planned and erected based in part upon the garbage tonnage to be derived from the municipal corporation, the municipality may not withdraw from the district until the construction of the facility has been completed

and the principal and interest on the bonds have been paid off.

2. When a request for an Opinion of the Attorney General presents a question, which is at that time pending in a court proceeding, it would, in almost all cases, be improper for the Attorney General to express his opinion on such a question.

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To: Daniel T. Spitler, Wood County Pros. Atty., Bowling Green, Ohio  
By: William J. Brown, Attorney General, October 19, 1972

I have before me your request for my opinion, which asks the following questions:

"1. Can a village withdraw from a garbage and refuse district created pursuant to Ohio Revised Code Chapter 343 (by the Board of County Commissioners) after their request to be included has been accepted and the sanitary landfill has been planned and created based in part upon the garbage tonnage to be derived from the village?

"2. Can a Board of County Commissioners adopt rules and regulations which preclude the construction, maintenance or operation of sanitary landfills or dumps other than those to be constructed or operated by the board of county commissioners in its garbage and refuse districts, even though a private firm has complied with all requirements of Ohio Revised Code Chapter 3734?"

The facts underlying these questions had been stated by you in a previous letter as follows:

"Pursuant to Section 343.01, O.R.C., the Wood County Board of Commissioners created a Wood County Garbage and Refuse District. The main facility of this garbage and refuse district is a sanitary landfill operated by the county which opened January 31, 1972. All of Wood County has been included in this garbage and refuse district, including the Village of Northwood which by ordinance dated January 27, 1966, requested permission to be made part of this garbage and refuse district.

"Based upon this request, the sanitary landfill was engineered with the tonnage to be generated from the Village of Northwood in mind. The same village has now advised the Board of County Commissioners that it has passed an ordinance dated December 9, 1971, wherein they repealed the ordinance requesting that it become part of the Wood County garbage and refuse district."

Section 343.01, Revised Code, which concerns the authority of a board of county commissioners with reference to garbage and refuse disposal, reads in pertinent part as follows:

"(A) Any board of county commissioners may, by resolution, lay out, establish, and maintain one or more garbage and refuse disposal districts within its respective county, and may cause such surveys as are

necessary to be made by a competent sanitary engineer, for the determination of the proper boundaries of such districts. The boundaries of any such district may include the entire county, may be revised from time to time, and may include a part or all of the territory within a municipal corporation when authorized by ordinance of the legislative authority of such municipal corporation. Each such district shall be designated by an appropriate name or number. The board may acquire, by purchase or lease, construct, improve, enlarge, replace, maintain, and operate such garbage and refuse collection systems within any such district and such garbage and refuse disposal plants and facilities within or without any such district as are necessary for the protection of the public health.

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"The board may make, publish, and enforce rules and regulations for the construction, maintenance, protection, and use of garbage and refuse collection and disposal facilities. Such rules and regulations shall not be inconsistent with the rules and regulations of the department of health. No garbage and refuse disposal system plant or facilities shall be constructed in any county outside municipal corporations by any person, firm, or corporation until the plans and specifications for such plant or facilities have been approved by the board. Such construction shall be done under the supervision of the county engineer, and any person, firm, or corporation, proposing or constructing such improvements, shall pay to the county all expenses incurred by the board in connection therewith.

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(Emphasis added.)

Your first question asks whether a municipal corporation, which by ordinance agreed to inclusion within a disposal district created under this Section, can thereafter withdraw from the district by its own motion. In answering this question, I must assume that such district has been validly created. Section 343.01 provides that a garbage and refuse disposal district created by a board of county commissioners "may include a part or all of the territory within a municipal corporation when authorized by ordinance of the legislative authority of such municipal corporation." This provision would permit an incorporated village to seek membership in a disposal district by passing an ordinance to that effect. I can, however, find no statutory authority which would permit a village, once a member of such a district, to withdraw until the financial obligations of the district have been settled. The language of Section 343.02, Revised Code, seems to indicate clearly that, once having been included in a disposal district, a municipal corporation may only withdraw after the disposal facility has been paid for in full. That Section provides in pertinent part as follows:

"Whenever any portion of a garbage and refuse disposal district is incorporated as or annexed to a municipal corporation, the area so incorporated or annexed shall remain under the jurisdiction of the board of county commissioners for garbage and refuse disposal purposes, until such disposal facilities for the area, for which

detailed plans have been prepared and the resolution declaring the necessity thereof has been adopted by the board, are completed and the principal of and interest on any bonds issued to finance such improvement are paid in full, or until the board abandons such projects." (Emphasis added.)

An examination of some analogous Sections of the Revised Code leads to the same conclusion. Section 2151.34, Revised Code, provides for the organization of a district to establish and support a detention home for juveniles. Sections 343.01 and 2151.34 are similar in that both provide for the creation of districts which may be composed of smaller entities, municipal corporations in the case of a garbage and refuse disposal district, and counties in the case of a detention home district. However, while a municipal corporation may withdraw from a garbage and refuse disposal district only after payment of the district's financial obligations, Section 2151.3413, Revised Code, specifically provides a somewhat more lenient procedure when a county wishes to withdraw from a detention home district.

Another analogous situation appears in Section 306.32, Revised Code, under which a regional transit authority may be created by any combination of counties, municipal corporations, and townships. When the statutes concerning such authorities were originally enacted, there was no provision for dissolution; however, the General Assembly, remedied the situation by enacting Section 306.54, Revised Code, which provides the necessary authority. See Opinion No. 72-053, Opinions of the Attorney General for 1972.

These analogous Sections indicate that the General Assembly provides statutory authority for withdrawal and dissolution when it intends such authority to exist. Since the only statutory provision authorizing withdrawal from a garbage and refuse disposal district postulates payment in full of the district's obligations, I must conclude that the Village of Northwood may not withdraw from the district here until its bonded debt has been paid.

I note also that, as mentioned in your request, the creation of the landfill by the board of county commissioners here was based in part upon the garbage tonnage to be derived from the village. Since the village voluntarily joined the district, and permitted the landfill to be created and the bonds to be issued under Section 343.07, Revised Code, under the presumption that it was part of the district, it would not be equitable to permit the village to withdraw and avoid its share of the expenses.

Your second question concerns the power of a board of county commissioners to adopt rules and regulations precluding the construction, maintenance, or operation of sanitary landfills and dumps within its jurisdiction, other than those to be constructed or operated by the board in its garbage and refuse disposal districts. As has been noted above, Section 343.01 provides that the county commissioners "may make, publish, and enforce rules and regulations for the construction, maintenance, protection, and use of garbage and refuse collection and disposal facilities." The only limitation on this provision is that such regulations may not be inconsistent with those of the Department of Health. An examination of that Department's regulations reveals nothing to prevent the board of county commissioners from proceeding as proposed.

One of my predecessors answered the same question in

Opinion No. 66-146, Opinions of the Attorney General for 1966. The first branch of the syllabus of that Opinion reads as follows:

"A board of county commissioners may adopt rules and regulations which could preclude the construction, maintenance, or operation of sanitary landfills or dumps other than those to be constructed or operated by the board of county commissioners in its garbage and refuse disposal districts."

Subsequently, the General Assembly enacted Chapter 3734, Revised Code, which provides for approval of solid waste disposal facilities by the Department of Health. As you are aware, it is now being urged in the Supreme Court that, by the enactment of Chapter 3734, the General Assembly pre-empted the authority of the boards of county commissioners in this respect under Chapter 343. State, ex rel. Benton's Village Sanitation Service, Inc. v. Usher and Wood County Board of Health, Case No. 72-704. In almost all cases it would, of course, be improper for me to issue an Opinion on a question which is presently awaiting judicial decision.

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

1. When a board of county commissioners has accepted the request of a municipal corporation to be included in a garbage and refuse disposal district, validly created pursuant to Chapter 343, Revised Code, and when the disposal facility has been planned and erected based in part upon the garbage tonnage to be derived from the municipal corporation, the municipality may not withdraw from the district until the construction of the facility has been completed and the principal and interest on the bonds has been paid off.

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