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GARBAGE AND REFUSE COLLECTION AND DISPOSAL—
TOWNSHIP TRUSTEES NOT AUTHORIZED TO PROVIDE
SUCH SYSTEM BY PURCHASE OF EQUIPMENT AND DIRECT
EMPLOYMENT OF PERSONNEL—AUTHORIZED ONLY TO
CONTRACT FOR THE SERVICE WITH PROPER MUNICIPAL
OR COUNTY AUTHORITIES OR INDEPENDENT CONTRAC-
TORS—SECTION 505.27 ET SEQ., RC.

SYLLABUS:

Under the provisions of Section 505.27 et seq., Revised Code, Section 3295-1 et seq., General Code, township trustees are not authorized to provide a system of garbage and refuse collection and disposal by the purchase of equipment and the direct employment of personnel therefor, but are authorized only to contract for such service with the proper municipal or county authorities or with independent contractors.

Columbus, Ohio, March 19, 1954

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

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

“We have had a request from one of the townships in Lucas County, for an interpretation of Sections 3295-1 et seq. (Revised Code 505.27 et seq).

“This township has sufficient funds to maintain a waste disposal district. They have requested us to advise, first, if under the present statutes the township is authorized to operate and maintain waste disposal service rather than do so by entering into contracts with municipal, county or independent contrac-

tors; second, whether the funds collected under general tax levies now held by them can be used for such purposes.”

The sections to which you refer, were originally embodied in an Act of the General Assembly passed April 28, 1943, embracing Sections 3295-1 to 3295-7, inclusive, of the General Code. They are now codified as Sections 505.27 to 505.33, inclusive, of the Revised Code. The title of the Act, which is found in 120 Ohio Laws, 285, was as follows:

“AN ACT

To supplement section 3295 of the General Code by the enactment of supplemental sections 3295-1, 3295-2, 3295-3, 3295-4, 3295-5, 3295-6 and 3295-7, relative to granting power to township trustees to contract for garbage and refuse disposal.”

The title, while not controlling is quite suggestive of the limited purpose of the Act. Section 3295, General Code, referred to in the title, had no relation whatever to the subject of garbage or waste disposal, but was merely a general section authorizing the township trustees, in addition to other powers conferred by law, to purchase and equip a township hall, parks, bridges, viaducts, etc. The pertinent portions of the sections of the Revised Code embraced in the consideration of the questions you present, are as follows:

“Section 505.27. Boards of township trustees, either severally or jointly, may enter into written contracts with the proper municipal or county authorities or with independent contractors for the collection and disposal of garbage and refuse in any part of the township territory created into a waste disposal district as provided in section 505.28 of the Revised Code.”

Section 505.28, Revised Code, authorizes a board of township trustees by unanimous vote, to create a waste disposal district within the township, and the section further requires such district to be created if petitioned therefor by 65% of the electors residing within the boundaries of a designated area. The section further provides that 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 size than one acre.

Section 505.29, Revised Code, provides as follows:

“The board of township trustees may, in any year, levy a sufficient tax within the ten-mill limitation, upon all taxable prop-

erty in a waste disposal district to provide and maintain waste disposal service.

“In the alternative the board of any township which has contracted for the collection or disposal of garbage or refuse on behalf of any district may, by resolution, establish equitable charges of rents to be paid such township, for the use and benefit of such service, by every person, firm, or corporation whose premises are so served. Such charges shall constitute a lien upon the property served, and, if not paid when due, shall be collected in the same manner as other township taxes.”

Section 505.31, Revised Code, authorizes the township clerk to “collect the service charges for waste disposal service,” and provides that all moneys so collected shall be kept in a special fund designated as the “waste collection fund.” This section further provides:

“* * * Such funds shall be used for payment of the costs of the management, maintenance, and operation of the garbage and refuse collection and disposal system in the several waste disposal districts. * * *”

The sentence last quoted, standing alone, might be capable of being construed as authorizing the township trustees to manage, maintain and operate a garbage and refuse collection and disposal system by the purchase of the necessary equipment, including motor vehicles, and by the employment of the requisite number of employees. Such a construction, however, would ignore the *specific* authorization of Section 505.27 which only permits the performance of such functions by *contract*.

By way of contrast, I call attention to the powers given by statute to the county commissioners. In Section 343.01, Revised Code, authority is given to the county commissioners to lay out and establish one or more garbage and refuse disposal districts outside municipal corporations. This section further provides:

“* * * The board may acquire, construct, 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. * * *”

The above quoted provision, together with the statutes which follow, plainly authorize the county commissioners to establish and operate garbage and refuse disposal plants by the use of its own forces and equipment.

It may be observed in this connection that municipal corporations unquestionably have abundant authority under their home rule powers to do the same.

It seems to me quite plain that the General Assembly, in granting authority to township trustees to provide for garbage and refuse disposal by contract, intended to limit their authority strictly to the power granted. It may be observed in this connection, that the General Assembly in the matter of authorization of public improvements by the subdivisions under its control, has often limited them to carrying out designated powers only by contracts. One instance where specific authority has been granted to a township to employ its own forces and equipment is found in Section 5575.01, Revised Code, where township trustees are permitted to do road construction and repair, within certain limitations, by force account. These restrictions are based upon considerations of public policy which, wise or unwise, are solely within the discretion of the legislature.

It is well established, of course, that township trustees have only such powers as the legislature has seen fit to grant, together with such implied powers as are essential to the exercise of the granted powers. See 39 Ohio Jurisprudence, page 276.

Accordingly, it is my opinion that under the provisions of Section 505.27 et seq., Revised Code, Section 3295-1 et seq., General Code, township trustees are not authorized to provide a system of garbage and refuse collection and disposal by the purchase of equipment and the direct employment of personnel therefor, but are authorized only to contract for such service with the proper municipal or county authorities or with independent contractors.

Respectfully,

C. WILLIAM O'NEILL

Attorney General