

OPINION NO. 87-048**Syllabus:**

A board of county commissioners may not use garbage district funds arising under R.C. 343.08 to repair township roads in and around a county landfill.

To: Joseph H. Niemeyer, Hancock County Prosecuting Attorney, Findlay, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

I have before me your request for my opinion on whether a board of county commissioners may use county garbage district funds to repair township roads in and around a county landfill. You have indicated that the roads may have deteriorated as a result of continuous and heavy use by landfill patrons.

As a creature of statute, a board of county commissioners may exercise only those powers expressly granted by statute or necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Accordingly, the authority to use garbage district funds to repair township roads must be either expressly granted by statute or necessarily implied from an express statutory provision. See generally 1985 Op. Att'y Gen. No. 85-058 (a board of county commissioners has no authority to license collectors of solid waste).

R.C. Chapter 343 sets forth the powers of a board of county commissioners with respect to garbage and refuse disposal. See State v. Max W. Fenberg & Sons, Inc., 52 Ohio App. 2d 203, 369 N.E.2d 12 (Wyandot County 1976). Pursuant to R.C. 343.01(A), a board of county commissioners may establish and maintain one or more garbage and refuse disposal districts within the county. Further, under R.C. 343.01(B), the county commissioners of two

or more counties may establish and maintain a joint garbage and refuse disposal district. Since you have not indicated that Hancock County has joined a joint garbage and refuse disposal district, I will limit my discussion to a single county garbage and refuse disposal district.

R.C. 343.08 establishes the fund for garbage district use. It specifically authorizes a board of county commissioners to "fix reasonable rates or charges to be paid by every person, board of township trustees, or board of education that owns premises to which" services are made available. In addition, a county owning or operating a garbage and refuse disposal, refuse recycling, or resource recovery facility "may fix reasonable rates or charges for the use of such facility by political subdivisions, corporations, private collectors, and other users," R.C. 343.08, who have contracted for such use with the county. R.C. 343.08 directs that:

All moneys collected as rates or charges for garbage and refuse collection, disposal, refuse recycling, or resource recovery service in any district shall be paid to the county treasurer in a county district...and kept in a separate and distinct fund to the credit of the district. The fund shall be used for the payment of the cost of the management, maintenance, and operation of the garbage and refuse collection, disposal, refuse recycling, or resource recovery facilities of the district...In no case shall money so collected be expended otherwise than for the use and benefit of such district. (Emphasis added.)

Thus, pursuant to the express language of R.C. 343.08, the garbage district fund may be used only to pay the cost of management, maintenance, and operation of the garbage and refuse collection, disposal, refuse recycling, or resource recovery facilities of the district. In addition, if there is any surplus in the fund after such uses, it "may be used for the enlargement or replacement" of the facilities "and for the payment of the interest and principal on bonds and bond anticipation notes issued pursuant to [R.C. 343.07]." See R.C. 343.08. It is clear, therefore, that the express intention of the General Assembly is to permit the use of such funds for the maintenance and improvement of the garbage district facilities and not for the repair of roads. Although R.C. Chapter 343 does not define what constitutes garbage district "facilities," it is apparent that roads in and around a landfill are not contemplated by use of that term. Accordingly, I am bound to follow the plain language of the statute in determining that county garbage district funds may not be used for road repairs¹ as it is axiomatic that effect be given to words used in a statute, and that words not used may not be

¹ I note, however, that there are means by which a board of county commissioners may assist a township in maintaining township roads. See Van Scyoc v. Roth, 31 Ohio Op. 2d 382, 205 N.E.2d 617 (C.P. Monroe County 1964). As a general rule, R.C. 5535.01 divides the public highways into three classes: state roads, county roads, and township roads. Pursuant to subsections (B) and (C) of that section county roads "shall be maintained by the board of county commissioners," R.C. 5535.01(B), and "[t]he board of township trustees shall maintain all [township] roads

inserted. Dougherty v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982); Bernardini v. Bd. of Education, 58 Ohio St. 2d 1, 387 N.E.2d 1222 (1979).

It is my opinion, therefore, and you are advised that a board of county commissioners may not use garbage district funds arising under R.C. 343.08 to repair township roads in and around a county landfill.

within its township," R.C. 5535.01(C). R.C. 5535.01(C) further provides that "[t]he board of county commissioners may assist the board of township trustees in maintaining all [township] roads. In addition, R.C. 5535.08 provides that a township and a county may, by agreement, "contribute to the repair and maintenance of the roads under the control of the other." See generally 1981 Op. Att'y Gen. No. 81-039; 1979 Op. Att'y Gen. No. 79-045; 1921 Op. Att'y Gen. No. 1929, vol. I, p. 258 (surplus funds arising from levy under R.C. 5555.48 may be used to assist townships); see also R.C. 5571.01 and R.C. 5571.02. This authority to assist in maintaining township roads, however, does not permit the use of garbage district funds for such purpose since R.C. 343.08 specifically delineates the permissible uses for the garbage district fund.