

OPINION NO. 2003-012**Syllabus:**

Pursuant to R.C. 3734.57(G)(2), if a solid waste management plan or amended plan requires the construction of a new highway interchange in order to provide for access to sufficient solid waste management facility capacity, the board of directors of a joint solid waste management district may expend moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) for that purpose.

To: Amanda Spies Bornhorst, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio; Paul A. Mastriacovo, Stark County Prosecuting Attorney, Canton, Ohio
By: Jim Petro, Attorney General, April 25, 2003

You have requested an opinion concerning the authority of a board of directors of a joint solid waste management district (joint district) to expend moneys arising from the fees collected under R.C. 3734.57(B) and R.C. 3734.573(A). By way of background, Stark, Tuscarawas, and Wayne Counties established the Stark-Tuscarawas-Wayne Joint Solid Waste Management District in 1988.¹ Located within the district is a privately owned and operated solid waste disposal facility that commenced operation in 1989. This facility is accessed from interstate route 77 (I-77) by way of approximately ten miles of county roads that are maintained by Stark County. These roads were originally designed for automobile, light truck, and school bus traffic.

The trucks used to deliver solid wastes to the solid waste disposal facility typically weigh between nineteen and twenty-one tons when empty and twenty-six and forty tons when fully-loaded. The weight of these trucks when fully-loaded or empty exceeds the established maximum load limits of the county roads.² In addition, these trucks use these roads almost three hundred days of the year, and make approximately five hundred round trips to the solid waste disposal facility during the course of a normal work day.

¹Pursuant to R.C. 343.01(A)(2) and R.C. 3734.52, a board of county commissioners may establish a joint solid waste management district with the boards of county commissioners of one or more other counties.

²In accordance with the provisions of R.C. 4513.34, the owner and operator of the solid waste disposal facility was granted a permit authorizing its trucks to exceed the maximum load limits on some of the county roads used by those trucks to access the facility from I-77.

The Stark County engineer has determined that the county roads, as originally designed and constructed, are not physically adequate for this type of sustained heavy truck traffic. The use of these roads in this manner has caused extensive damage to both the road surface and the roadbed, and made the roads unsafe for all traffic. Because the design and construction of the existing roadbed is not adequate to support the repairs that are needed to make the roads usable for heavy truck traffic, the county engineer has determined that, absent major reconstruction of the roads, it will not be feasible to continue to maintain and repair these roads for such use.

In lieu of reconstructing these roads, the construction of a new highway interchange on I-77 has been proposed. A traffic study conducted by a private corporation at the request of the Stark-Tuscarawas-Wayne Joint Solid Waste Management District has recommended the construction of the new highway interchange in order to facilitate truck traffic access to the solid waste disposal facility.

The Stark-Tuscarawas-Wayne Joint Solid Waste Management District would like to proceed with the construction of the new highway interchange on I-77. The district has proposed contributing moneys it has collected from fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) to help defray the county's and state's construction costs. The use of these moneys in this manner has prompted you to ask whether the board of directors of the joint district may expend moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) to provide financial assistance to construct the new highway interchange.

In addressing this question, we are guided by the principle that a board of directors of a joint district, as a creature of statute, *see* note one, *supra*,³ has only those powers expressly provided by statute or as may exist by necessary implication. *See Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993). *See generally* 1997 Op. Att'y Gen. No. 97-036 at 2-212 (a joint-county board of alcohol, drug addiction, and mental health services, "as a creature of statute, has only those powers and duties that the General Assembly has either expressly or by necessary implication conferred upon it"). We are also mindful that it is well settled that any doubt as to the expenditure of public moneys must be resolved against the expenditure. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916).

R.C. 3734.57(B) authorizes the solid waste management policy committee of a joint district⁴ to levy fees upon the disposal of solid wastes at a solid waste disposal facility located within the district. R.C. 3734.573(A) also authorizes the committee to levy a fee upon the generation of solid wastes within the district.

Moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) that are received by the board of directors of a joint district are paid to the county treasurer,

³A joint solid waste management district is governed by a board of directors. R.C. 343.01. The district's board of directors is composed of the boards of county commissioners of the counties establishing the district, "except that if a county with a form of legislative authority other than a board of county commissioners participates, it shall be represented on the board of directors by three persons appointed by the legislative authority." R.C. 343.01(B). The powers, duties, and responsibilities of the district's board of directors are set forth in various provisions within R.C. Chapters 343 and 3734.

⁴Pursuant to R.C. 3734.54(B), the board of directors of a joint district must establish and convene a solid waste management policy committee to prepare the solid waste management plan for the district.

or other official designated by the board of directors, and kept in a separate and distinct fund to the credit of the district. R.C. 3734.57(G). These moneys may be expended by the board of directors of a joint district for any purpose listed in R.C. 3734.57(G)(1)-(10). *Id.*; *see also* R.C. 3734.57(B); R.C. 3734.573(A); 7 Ohio Admin. Code 3745-28-03(F).

Pursuant to R.C. 3734.57(G)(2), the board of directors of a joint district is authorized to use moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) for the “[i]mplementation of the approved solid waste management plan or amended plan” of the joint district.⁵ *See also* R.C. 3734.57(B); R.C. 3734.573(A); rule 3745-28-03(F)(2). Thus, if the expenditure of these moneys for the construction of a highway interchange is part of the joint district’s approved solid waste management plan or amended plan, then the moneys may be expended for that purpose. *See* 1993 Op. Att’y Gen. No. 93-018 at 2-98.

R.C. 3734.53(A) requires the solid waste management plan or amended plan of a joint district to “provide for, demonstrate, and certify the availability of and *access* to sufficient solid waste management facility capacity to meet the solid waste management needs of the district.”⁶ (Emphasis added.) *See generally* R.C. 3734.56(A) (“[a]n amended plan shall incorporate all of the elements required under [R.C. 3734.53]”). The word “access” means, *inter alia*, “a way by which a thing or place may be approached or reached.” *Webster’s Third New International Dictionary* 11 (1993). *See generally* R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). Accordingly, under R.C. 3734.53(A), a solid waste management plan must provide for a way by which sufficient solid waste management facility

⁵A joint district is required to prepare, adopt, submit, and implement a solid waste management plan that complies with R.C. 3734.55. R.C. 3734.52(A); R.C. 3734.54; R.C. 3734.55. This plan must be amended and updated periodically. R.C. 3734.56. A joint district’s plan or amended plan must be reviewed and approved by the Director of Environmental Protection and must be ratified by specified numbers of the counties, municipal corporations, and townships included within the joint district. R.C. 3734.55; R.C. 3734.56(A). If the Director of Environmental Protection finds that a joint district has “materially failed” to implement its plan or amended plan, the Director “shall issue an enforcement order” directing the board of the district to comply with the implementation schedule set forth in the plan or amended plan “within a specified, reasonable time.” R.C. 3734.55(E); *see also* R.C. 3734.13.

⁶A solid waste management plan or amended plan must contain a number of items specified by statute, including, but not limited to, an inventory of sources, composition, and quantities of solid wastes generated in the district; an inventory of existing facilities where solid wastes are being disposed of and an estimate of the remaining disposal capacity; projections of amounts of solid waste to be disposed of in the district in each of the years covered by the plan or amended plan; an identification of additional facilities needed; other projections that are necessary or appropriate to ascertain and meet the solid waste management needs of the district during the period covered by the plan or amended plan; and a program for providing informational or technical assistance regarding source reduction to solid waste generators. R.C. 3734.53(A)(1)-(14). The purpose of a plan or amended plan is to provide a comprehensive and prospective scheme for disposing of solid wastes. *See generally* R.C. 3734.52(E) (“[t]he solid waste management plan or amended plan of each county or joint district shall provide for the maximum feasible utilization of solid waste facilities that were in operation within the district, or for which permits were issued under [R.C. 3734.05], on or before the effective date of the plan or amended plan and that are in compliance with [R.C. 3734.01-.13] and rules adopted under those sections”).

capacity may be approached or reached. *See also* R.C. 3734.53(A)(3) (a solid waste management plan must include “[a]n inventory of existing solid waste collection systems and routes, transportation systems and routes, and transfer facilities within the district”).

Such a provision of a plan or amended plan is an intrinsic part of providing a comprehensive scheme for solid waste disposal. *See* R.C. 3734.53(A). The need to provide for access to sufficient solid waste management facility capacity is part of the solid waste disposal duty placed upon a joint district by a plan or amended plan. *See id.* In order to discharge this duty, a joint district may have to implement activities that are directed at providing the access required by a plan or amended plan.

As stated above, R.C. 3734.57(G)(2) authorizes the board of directors of a joint district to use moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) for the “[i]mplementation of the approved solid waste management plan or amended plan” of the joint district. This provision authorizes a joint district to use certain moneys to implement activities that are required to be performed under a joint solid waste management plan or amended plan. *See generally* 1993 Op. Att’y Gen. No. 93-018 (a solid waste management plan may include a description of and schedule for closure and post-closure activities at a solid waste disposal facility, and may provide for use of a portion of the fees collected pursuant to R.C. 3734.57(B) to implement those closure and post-closure activities).

Because a joint solid waste management plan or amended plan must provide for access to sufficient solid waste disposal capacity, R.C. 3734.53(A), activities needed to provide that access may be funded pursuant to R.C. 3734.57(G)(2). *See* 1993 Op. Att’y Gen. No. 93-018. Accordingly, pursuant to R.C. 3734.57(G)(2), if a solid waste management plan or amended plan requires the construction of a new highway interchange in order to provide for access to sufficient solid waste management facility capacity, the board of directors of a joint solid waste management district may expend moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) for that purpose.

Based on the foregoing, it is our opinion, and you are hereby advised that, pursuant to R.C. 3734.57(G)(2), if a solid waste management plan or amended plan requires the construction of a new highway interchange in order to provide for access to sufficient solid waste management facility capacity, the board of directors of a joint solid waste management district may expend moneys arising from the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) for that purpose.