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GARBAGE AND REFUSE, DISPOSAL—§343.04 R.C.—FINANCING—DISPOSAL FACILITY WITHOUT COLLECTCION SERVICES, CHAPTER 343. R.C.—CHARGES, OWNERS OF LAND, §343.08 R.C.—PERSONS ENTITLED TO NOTICE, §343.04 R.C.

SYLLABUS:

1. The board of county commissioners is authorized by Sections 343.04 and 343.07, Revised Code, to finance the entire cost of construction of disposal facilities for refuse by the issuance of general obligation bonds.
2. A board of county commissioners has authority, as provided in Chapter 343., Revised Code, to provide refuse disposal facilities without providing refuse collection services to the residents of the disposal district.
3. The board of county commissioners is required to fix a reasonable charge to be paid by the owners of improved lots or parcels as provided in Section 343.08, Revised Code.
4. Those persons, entitled to notice under the provisions of Section 343.04, Revised Code, are every person, firm, corporation, board of township trustees, and board of education which is the owner of premises within the disposal district created under authority of Section 343.01, Revised Code.

Columbus, Ohio, December 10, 1958

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir :

I have your request for my opinion reading in part as follows :

“Several years ago the Board of Montgomery County Commissioners created a Garbage and Refuse Disposal District for the entire county under the authority of Section 343.01 R.C.O. At that time the Board decided not to proceed with the construction of garbage and refuse disposal facilities for the district.

“The Board of County Commissioners now contemplates constructing and operating several refuse incinerators under the authority of Sections 343.01 through 343.08 R. C. O. ; however, the board does not plan to furnish refuse collection services to the residents of the district. Under their proposed plan, the county would require private refuse collectors to pay a fee for the use of the incinerators. The board also desires to finance this proposed project by the issuance of general obligation bonds.

“The question has now arisen as to whether the county has authority under Section 343.01 through 343.08 R. C. O. to provide refuse disposal facilities without also providing collection services to the residents of the district.

“* * *”

“In view of the fact that the issues raised by the County Commissioners proposed plan appear to be of general interest to the other counties throughout the state, your opinion is respectfully requested on the following questions :

- “1. Does a board of county commissioners have authority under Sections 343.01 to 343.08 R. C. O. to provide refuse disposal facilities without providing refuse collection services to the residents of the disposal district?
- “2. If your answer to question one is in the affirmative, is it necessary for the board of county commissioners to fix a reasonable charge to be paid by property owners as provided by Section 343.08 R. C. O.?
- “3. If your answer to question one is in the affirmative, what persons are required to be served with the notice of the hearing required by Section 343.04 R. C. O.?
- “4. Does a board of county commissioners have authority to finance the entire cost of constructing disposal facilities for refuse by the issuance of general obligation bonds, referred to in Section 343.07 R. C. O.?”

I shall consider your fourth numbered question first since the solution to it will prove helpful in answering your other three questions. In this regard, then, I invite your attention to the following provisions of Chapter 343., Revised Code.

Section 343.04, Revised Code, the pertinent part of which provides :

“* * * After approval of the detailed plans, specifications, and estimates of cost, the board shall adopt a resolution declaring that such improvement is necessary for the preservation and promotion of public health and welfare, designating the character of the improvement referring to the plans, specifications, and estimates of cost, stating the place where such plans, specifications, and estimates are on file and may be examined, *and stating what part of the costs of such improvement shall be paid by the county at large and what part shall be paid by the issuance of bonds payable from the revenues of the improvement as provided by section 343.07 of the Revised Code.*” (Emphasis added)

Section 343.07, Revised Code, reads:

“The board of county commissioners may issue bonds of the county for the purpose of paying a part or the whole cost of the acquisition, construction, or repair of any improvement provided for in sections 343.01 to 343.08, inclusive, of the Revised Code, including the expenses of the sanitary engineer and all other expenses necessary and incidental thereto. The cost of any such improvement shall include, without limiting such cost, the cost of acquiring any necessary real estate, and any trucks, rolling stock, or equipment necessary for the proper operation of the improvement. Such bonds shall state the particular improvement on account of which they are issued and the date of the resolution of the board authorizing their issuance. Such bonds shall be of such denominations and shall mature as provided in the improvement resolution, but shall mature no later than forty years from the date thereof, and shall be payable in annual or semiannual installments, beginning not later than five years from the date thereof, in such principal amounts that the total principal and interest payments in each year shall be substantially equal.

“The board shall, in the legislation authorizing the issuance of such bonds, provide that they shall not constitute general obligations of the county or be secured by the general credit and taxing power of the county, but shall be payable solely, as to principal and interest, from the revenues of the improvement, constructed with the proceeds of the sale of the bonds, as derived from the rates or charges established for such services under section 343.08 of the Revised Code, in which event the board shall covenant to fix rates or charges sufficient to provide adequate funds for such

purpose, after payment of the cost of management, maintenance, and operation of such garbage and refuse collection and disposal plant and facilities.

“In addition to the power to issue such bonds, the board may issue general obligation bonds of the county, in compliance with sections 133.01 to 133.65, inclusive, of the Revised Code, to pay for that part of the cost of such improvement which is to be borne by the county at large, and may provide that such revenue bonds shall be general obligations of the county payable from taxes to be levied upon all the taxable property therein. Such bonds shall be payable primarily from the net revenues derived from such improvement and such net revenues shall be pledged for the payment of the interest and principal thereof. The surplus net revenues in any year, over and above the amount of principal and interest payable in that year and such additional amount as is provided in the resolution authorizing said bonds to be held as a reserve for debt service, may be used for the enlargement and replacement of such garbage and refuse collection and disposal facilities.” (Emphasis added)

Since I find no limitation upon the amount of the cost of such a project to be borne by the county at large and since this determination has been given to the board of county commissioners, I conclude that the board of county commissioners is authorized by Section 343.04 and Section 343.07, Revised Code, to finance the entire cost of construction of disposal facilities for refuse by the issuance of general obligation bonds.

Proceeding now to the first of your enumerated questions I invite your attention to the omission of express provisions in Chapter 343., Revised Code, requiring *both collection and disposal* facilities to be furnished. Upon the establishment of a garbage and refuse disposal district under authority of Section 343.01, Revised Code, Section 343.04, Revised Code, provides for the preparation and construction of disposal facilities:

“The board of county commissioners may, after the establishment of any garbage and refuse disposal district, have a general plan of garbage and refuse disposal facilities for such district prepared by the county sanitary engineer. After such general plan has been approved by the board, it shall have the engineer prepare detailed plans, specifications, and estimates of the cost of such improvement, which, upon approval by the board, shall be carefully preserved in the office of the board or the engineer, and shall be open to inspection by all persons interested in such improvement. After approval of the detailed plans, specifications, and estimates of cost, the board shall adopt a resolution declaring that such improvement is necessary for the preservation and promo-

tion of public health and welfare, designating the character of the improvement referring to the plans, specifications, and estimates of cost, stating the place where such plans, specifications, and estimates are on file and may be examined, and stating what part of the cost of such improvement shall be paid by the issuance of bonds payable from the revenues of the improvement as provided by section 343.07 of the Revised Code.

“Such resolution shall contain a description of the boundaries of the garbage and refuse disposal district and shall designate when and where objections to the improvement or the boundaries of the district will be heard by the board. The date of such hearing shall not be less than twenty-four days after the date of the first publication of such resolution. The board shall cause such resolution to be published once a week, for two consecutive weeks, in a newspaper of general circulation within the county, and on or before the date of the second publication it shall send a notice of the time and place of such hearing, by mail, to the owner of every property to be served by such facilities. Notice of such hearing shall be mailed to the clerk of any municipal corporation any part of which lies within such district. A hearing shall be granted by the board to all parties interested at the time and place fixed by such resolution and notice. Written objections to or indorsements of the proposed improvement or the boundaries of the district shall be received by the board for a period of five days after the hearing, and no action shall be taken by the board until after such period has elapsed. The minutes of the hearing, showing the persons who appear in person or by attorney and all written objections, shall be entered on the journal of the board and shall be preserved and filed in its office.”

Section 343.01, Revised Code, provides in pertinent part :

“(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, outside of municipal corporations, 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. Each such district shall be designated by an appropriate name or number. 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.”

Upon the basis of the foregoing I conclude that a board of county commissioners has authority, as provided in Chapter 343., Revised Code,

to provide refuse disposal facilities without providing refuse collection services to the residents of the disposal district.

In answer to your second question I invite your consideration to Section 343.08, Revised Code:

“The board of county commissioners shall fix reasonable rates or charges to be paid by every person, firm, corporation, board of township trustees, or board of education which is the owner of premises to which the collection and disposal of garbage and refuse is made available, and may change such rates or charges whenever it deems it advisable. Charges for collection and disposal shall be made only against lots or parcels which are improved, or in the process of being improved, with at least one permanent, portable, or temporary building. When any such charges are not paid, the board shall certify them to the county auditor, who shall place them upon the real property duplicate against the property served by such collection and disposal, and such charges shall be a lien on such property from the date they are placed upon the real property duplicate by the auditor, and shall be collected in the same manner as other taxes.

“All moneys collected as rates or charges for garbage and refuse collection and disposal in any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be used for the payment of the cost of the management, maintenance, and operation of the garbage and refuse collection and disposal facilities of such district, and any surplus may be used for the enlargement or replacement of such facilities, and for the payment of the interest and principal on any debt incurred for the acquisition and construction of such garbage and refuse collection and disposal facilities, but in no case shall money so collected be expended otherwise than for the use and benefit of such district.” (Emphasis added)

The foregoing provisions are quite clear and dispel the conclusion that no charges need be made if the entire disposal facility is financed by general obligation bonds payable from tax revenues since the charges to be made under Section 343.08, *supra*, are to meet the “cost of the management, maintenance, and operation of the * * * disposal facilities of the district.” This is indicative that such costs of the disposal facility be met by the users and not the county at large.

The board of county commissioners is authorized to issue revenue bonds which are general obligation bonds of the county with retirement to be made primarily from revenues but secured by the general obligation of the county as provided in Section 343.07, Revised Code.

Therefore, I conclude that the board of county commissioners is required to fix a reasonable charge to be paid by the owners of improved lots or parcels as provided in Section 343.08, Revised Code.

In answer to your third enumerated question I invite your attention to Section 343.04, Revised Code, reading in pertinent part:

“Such resolution shall contain a description of the boundaries of the garbage and refuse disposal district and shall designate when and where objections to the improvement or the boundaries of the district will be heard by the board. The date of such hearing shall not be less than twenty-four days after the date of the first publication of such resolution. The board shall cause such resolution to be published once a week, for two consecutive weeks, in a newspaper of general circulation within the county, and on or before the date of the second publication it shall send a notice of the time and place of such hearing, by mail, to the owner of every property to be served by such facilities. Notice of such hearing shall be mailed to the clerk of any municipal corporation any part of which lies within such district. A hearing shall be granted by the board to all parties interested at the time and place fixed by such resolution and notice. Written objections to or indorsements of the proposed improvement or the boundaries of the district shall be received by the board for a period of five days after the hearing, and no action shall be taken by the board until after such period has elapsed. The minutes of the hearing, showing the persons who appear in person or by attorney and all written objections, shall be entered on the journal of the board and shall be preserved and filed in its office.”

I interpret the phrase “the owner of every property to be served by such facilities” to mean the owner of every property within the disposal district. As you have stated in your inquiry the district embraced the “entire county.” You mean, I assume, all of the area of the county capable of being made a part of a disposal district; Section 343.01, *supra*, provides:

“(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, outside of municipal corporations, * * *.”

Therefore, the present disposal district embraces that part of the county *presently* lying outside the municipal corporations of the county. In making this determination I have assumed that no bonded indebtedness was incurred by such district for which the provisions of Section 343.02, Revised Code, would require annexed or incorporated territory to remain under the

jurisdiction of the board of county commissioners for garbage and refuse disposal purposes until such time as bonds for improvements have been retired.

I conclude, therefore, that those persons entitled to notice under the provisions of Section 343.04, Revised Code, are every person, firm, corporation, board of township trustees and board of education which is the owner of premises within the disposal district created under authority of Section 343.01, Revised Code.

In sum, therefore, it is my opinion and you are accordingly advised that :

1. The board of county commissioners is authorized by Section 343.04 and 343.07, Revised Code, to finance the entire cost of construction of disposal facilities for refuse by the issuance of general obligation bonds.

2. A board of county commissioners has authority, as provided in Chapter 343., Revised Code, to provide refuse disposal facilities without providing refuse collection services to the residents of the disposal district.

3. The board of county commissioners is required to fix a reasonable charge to be paid by the owners of improved lots or parcels as provided in Section 343.08, Revised Code.

4. Those persons, entitled to notice under the provisions of Section 343.04, Revised Code, are every person, firm, corporation, board of township trustees, and board of education which is the owner of premises within the disposal district created under authority of Section 343.01, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General