

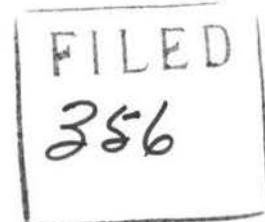
COUNTIES:
WASTE DISPOSAL:
DUMPING GROUNDS:

A third class county has the authority pursuant to Section 64.490, RSMo 1969, to operate a county solid waste disposal area. A third

class county has the authority to finance the operation of a solid waste disposal area by general obligation bonds but not by revenue bonds.

OPINION NO. 356

July 19, 1971



Honorable Stanley J. Murphy
Prosecuting Attorney
St. Francois County Courthouse
Farmington, Missouri 63640

Dear Mr. Murphy:

This is in reply to your request for an official opinion of this office concerning two questions relating to county waste disposal.

I

Does a third class county have the authority to operate a county solid waste disposal area?

In 1967 the legislature enacted Section 64.490, RSMo, which reads as follows:

"1. Any county of the second, third or fourth class may purchase or lease, maintain and operate a dumping grounds for the disposal of ashes, garbage, refuse and rubbish as defined in sections 64.460 to 64.487 and may agree or contract with any municipality within the county for the operation of a dumping grounds, as provided in chapter 70, RSMo.

"2. Any dumping grounds operated under the provisions of this section shall be inspected by the state division of health and is subject to the rules and regulations promulgated by the division pursuant to section 64.477."

It would seem most apparent from this statute that the answer to your question is in the affirmative. However, as stated in attachments to your letter, a question has been raised by the United

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States Department of Agriculture that Section 64.490 only authorizes dumping grounds, which are not the same and presumably not as extensive as waste disposal facilities, which it is contended are authorized by the County Option Dumping Ground Law, Sections 64.460 through 64.487, RSMo.

An examination of these sections reveals no use of any certain language which would indicate any difference in types of disposal areas designated by Sections 64.460 through 64.487 as distinguished from Section 64.490.

Section 64.460 merely defines "ashes," "garbage," "refuse," and "rubbish." Section 64.463, RSMo, prohibits disposal of ashes, garbage, rubbish or refuse at any place except a "disposal area licensed as provided in sections 64.460 to 64.487."

Applications for licenses for disposal areas are made pursuant to Section 64.467. Inspections of proposed sites are made by the State Division of Health, Section 64.470, pursuant to rules and regulations promulgated by the Division of Health, Section 64.477. Such rules and regulations are on file with the Secretary of State's Office and require what is commonly known as a sanitary landfill.

Thus, any person in a county where the County Option Dumping Ground Law has been put into effect, Section 64.483, can only dispose of ashes, garbage, rubbish or refuse at a licensed disposal area licensed pursuant to rules and regulations of the Division of Health.

Under Section 64.490 a third class county may operate a "dumping ground" for the disposal of the same ashes, garbage, refuse and rubbish. Such a "dumping ground" is subject to the same rules and regulations as licensed "disposal areas."

Therefore, in our opinion a "dumping ground" is the same as a "disposal area" and a third class county has the authority to operate a county solid waste disposal area.

II

Does a third class county have the authority to finance the operation of a solid waste disposal area by either revenue or general obligation bonds?

A county has only such authority as is expressly given them and such implied authority as is necessary to execute the express power given. Lancaster v. County of Atchison, 180 S.W.2d 706 (Mo. banc 1944).

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The following constitutional provisions provide for political subdivisions to be indebted, reading as follows:

"Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per cent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of two-thirds of the qualified electors voting thereon may become indebted in an amount not to exceed ten per cent of the value of such taxable tangible property." (Article VI, Section 26(b))

"Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur and additional indebtedness for county or city purposes not to exceed five per centum of the taxable tangible property shown as provided in section 26(b)." (Article VI, Section 26(c))

To implement the quoted constitutional provisions, the legislature has enacted what now appears as Chapter 108, RSMo, providing the mechanics for the conduct of elections to test the sense of the electorate upon proposals to increase the indebtedness of counties. Found in such chapter are Sections 108.010 and 108.020, which read as follows:

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years; provided such indebtedness shall not exceed five percent of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes." (Section 108.010, RSMo 1969)

"Any county in this state, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness for

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county purposes in addition, to that authorized in section 108.010 not to exceed five percent of the taxable tangible property shown as provided in said section." (Section 108.020, RSMo 1969)

The foregoing constitutional and statutory provisions disclose that counties of any class, including third class counties, do have the authority to become indebted through the issuance of general obligation bonds for public county purposes. We find no such authority, however, for revenue bonds.

Therefore, the question becomes whether the operation of a solid waste disposal area is one for which such an indebtedness may be incurred upon an affirmative vote of the requisite number of electors.

Subsection 1 of Section 64.490, as quoted above, provides that second, third or fourth class counties may operate such an area. Therefore, it is our opinion that a third class county has the authority to finance the operation of a solid waste disposal area by general obligation bonds.

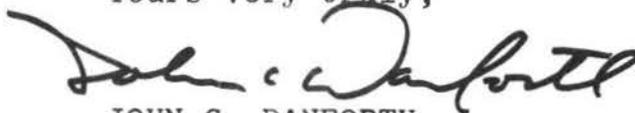
CONCLUSION

It is the opinion of this office that:

1. A third class county has the authority pursuant to Section 64.490, RSMo 1969, to operate a county solid waste disposal area; and
2. A third class county has the authority to finance the operation of a solid waste disposal area by general obligation bonds but not by revenue bonds.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General