

February 3, 1976

OPINION LETTER NO. 12
Answer by letter-Verhagen

Honorable Ronald L. Boggs
Prosecuting Attorney
St. Charles County Courthouse
St. Charles, Missouri 63301



Dear Mr. Boggs:

This opinion letter is in response to your questions relating to the Solid Waste Management Law, Sections 260.200 to 260.245, RSMo Supp. 1973, as amended by Senate Bill No. 98, 78th General Assembly, First Regular Session. Briefly restated, your questions are as follows:

- (1) Under the Solid Waste Management Law, may the St. Charles County Court (hereinafter referred to as County Court) require a permit or license of individuals or entities who wish to engage in the business of collecting, hauling, or disposing of solid waste in that county?
- (2) If the answer to the first question is in the affirmative, may the County Court, in addition, impose fees as an adjunct to the licensing or permit process?
- (3) May the County Court require "commercial establishments" within its jurisdiction to:
 - (a) Pay a nominal fee on an annual basis for a "solid waste permit"; and,
 - (b) Submit proof to the County Court that such establishment has a valid contract with a licensed hauler for the collection and disposal of solid waste?

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(4) May the County Court require each non-exempt resident of an unincorporated area within its jurisdiction to contract with a county licensed hauler for the collection and disposal of the resident's solid waste?

(5) May the County Court require each non-exempt resident of an unincorporated area within its jurisdiction to pay the county a fee for the collection of solid waste regardless of whether the resident avails himself of the collection service?

(6) May the County Court divide the unincorporated areas within its jurisdiction into "franchise areas" for purposes of granting hauling permits only to franchise holders and requiring such holders to contract with and collect solid waste from each non-exempt resident in such franchise area?

(7) If the County Court is not authorized to grant a franchise as outlined in question No. 6, may it nevertheless determine which licensed hauler will serve each unincorporated area within its jurisdiction and further require such designated hauler to contract with and collect solid waste from each non-exempt resident in such area?

(8) If the County Court may establish "franchises," must they be let on contract through open bidding pursuant to Section 50.660, RSMo 1969?

(9) May the County Court enact penalty provisions for the enforcement of its rules and regulations.

We will address your questions in the order that they have been posed.

Your first and second questions are interrelated and ask whether a county court may require those engaged in the business of solid waste collection and disposal to obtain a license or permit and, in addition, pay a fee as a prerequisite to obtaining such license or permit.

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The Missouri Solid Waste Management Law as contained in Sections 260.200 to 260.245, constitutes a clear expression of legislative intent to implement a state-wide solid waste management plan in cooperation with local governments, for the coordination and control of solid waste storage, collection, processing, transportation, and disposal. As this office has previously noted, ". . . the [Solid Waste Management] law was intended to eliminate the practice of numerous individuals of using unorthodox and unsightly as well as unsanitary means of disposal of refuse. . . ." Opinion Letter No. 312, 1974.

To facilitate the goal of a state-wide "solid waste management system," the legislature has provided in Section 260.215.1, that:

". . . each county . . . shall provide . . . for the collection and disposal of solid wastes within its boundaries; shall be responsible for implementing their approved plan required by section 260.220 as it relates to the storage, collection, transportation, processing, and disposal of their solid wastes; and may purchase all necessary equipment, acquire all necessary land, build any necessary buildings, incinerators, transfer stations, or other structures, lease or otherwise acquire the right to use land or equipment. Each city and county, may levy and collect charges for the necessary cost of providing such services, and may levy an annual tax . . . for public health purposes to implement a plan for solid waste management, and to do all other things necessary to provide for a proper and effective solid waste management system; . . ." (Emphasis supplied)

Subsection 2 of this section goes on to provide that:

"Any city or county may adopt ordinances, rules, regulations, or standards for the storage, collection, transportation, processing or disposal of solid wastes which shall be in conformity with the rules and regulations adopted by the department for solid waste management systems. However, nothing in sections 260.200 to 260.245 shall usurp the legal right of a city or county from adopting and enforcing local ordinances, rules, regulations, or standards for

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the storage, collection, transportation, processing, or disposal of solid wastes equal to or more stringent than the rules or regulations adopted by the department pursuant to sections 260.200 to 260.245." (Emphasis supplied)

And, the legislature further provided in subsection 3(a) of this section that:

"Cities or counties may contract as provided in chapter 70, RSMo, with any person, . . . to carry out their responsibilities for the storage, collection, transportation, processing, or disposal of solid wastes." (Emphasis supplied)

We are cognizant of the many Missouri cases which hold that counties may only exercise those powers expressly granted to them by statute or necessarily implied as incident to powers expressly granted. However, it is plausible that the power and authority granted county courts by the extremely broad language of Section 260.215 does give the power to county courts to require that a license or permit be granted to individuals or entities who wish to engage in the business of collecting, hauling, or disposing of solid waste in such counties. The broad language in such section authorizes the county to do all things necessary to provide for proper and effective solid waste management system; and, as stated above, it is arguable that there is necessarily implied, as incident to such power and authority, the power and authority to require that a license or permit be granted to those who wish to engage in the business of collecting, hauling, or disposing of solid waste in such counties.

We do not, however, believe that there is necessarily implied from such broad, general authority any right or authority by the county governing body to require the payment of a fee for such a permit or license as it is our view that such authority must be found in the statute.

We are enclosing Opinion No. 337 rendered December 22, 1971, to Charles H. Sloan, which holds that counties cannot collect fees from individuals except pursuant to statutory authority.

We believe that the reasoning above set out is also applicable to questions No. 3 and 4 of your request, and it is our view that it is plausible that a county governing body can require a "commercial establishment" to submit proof to the county court that the establishment has a valid contract with a licensed hauler

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for the collection or disposal of solid waste and to require each nonexempt resident of an unincorporated area within its jurisdiction to contract with a county-licensed hauler for the collection and disposal of a resident's solid waste on the ground that such power is implied as incidental to the general power given in Section 260.215 providing that the county court can do all things necessary to provide for a proper and effective solid waste management system.

However, as also pointed out above, it is our view that the county court has no authority to require the payment of a fee for a "solid waste permit" but is limited to issuance of licenses or permits.

We believe that it would be improper for us to make any holding as to question No. 5 because the issue raised by such question is now pending before the Missouri Supreme Court and the Supreme Court will necessarily pass on this issue in its opinion. The case in which this issue has been raised is the case of Craig et al. v. City of Macon, et al., Cause No. 59281.

Insofar as questions No. 6 and 7 are concerned, it is our view that it is arguable that the county governing body may provide that an exclusive license may be granted to one or more persons or other entities in certain areas in unincorporated parts of the county and require such haulers to contract with and collect solid waste from each nonexempt resident in the area in which the entity is licensed. We cannot with certainty hold that the county court cannot determine which licensed hauler or haulers will serve the various areas in the unincorporated part of the county and require such hauler or haulers to contract with and collect solid waste from each nonexempt resident in such area based on the ground that such power and authority is implied as incidental to the broad, general power and authority granted by Section 260.215.

As to question No. 8, it is our view that Section 50.660, RSMo, is applicable and requires that contracts shall be awarded to the lowest and best bidder after due opportunity for competition if the contract imposes a financial obligation upon a county within the limits found in Section 50.660. If the agreement entails no financial obligation being incurred by the county, then such section would be inapplicable and no bidding requirements would be applicable.

Your last question asks whether the county court may enact penalty provisions for the enforcement of its rules and regulations. Section 260.240(2) provides as follows:

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"Any rule, regulation, standard or order of a county court, adopted pursuant to the provisions of sections 260.200 to 260.245, may be enforced in a civil action for mandatory or prohibitory injunctive relief or for the assessment of a penalty not to exceed one hundred dollars per day for each day, or part thereof, that a violation of such rule, regulation, standard or order of a county court occurred and continues to occur, or both, as the court deems proper. The county court may request the prosecuting attorney or other attorney to bring any action authorized in this section in the name of the people of the state of Missouri."

It is our view that such section manifests a legislative intent to establish the only penalty for any persons or entities violating the rules or regulations promulgated by a county and, as such, provides the penalty for a violation of the valid rules and regulations adopted by the county.

We are aware of the opinion of the Supreme Court in the case of State v. Raccagno, No. 58843 (Mo. December 24, 1975). However, it is doubtful that such opinion means that all statutes purporting to provide criminal penalties or other penalties for violations of the rules and regulations of a governmental entity are invalid. It is our view that the determination must be made in each case as to whether or not sufficient guidelines have been set out in the statutory provisions authorizing the rules and regulations as a guide for the body issuing such rules and regulations so that the penalty provisions found in the statute are effective to provide punishment for violations of such rules and regulations.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op.No. 337
12-22-71, Sloan