

# OFFICE OF THE ATTORNEY GENERAL 91-00191



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MAR 20 1991

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Honorable Albert Hall  
Member, House of Representatives  
P. O. Box 275  
Gurley, Alabama 35748

Municipalities - Solid Waste  
Disposal

City of Huntsville has the power and authority to adopt rules and regulations by city ordinance to provide for the mandatory participation in the city's solid waste collection and disposal system.

Dear Representative Hall:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTIONS

1. Do ordinances 88-418 and 88-419 allow the City of Huntsville to monopolize the solid waste disposal business in the Huntsville area by saying, in effect, that if a city licensed business is not disposing of its solid waste at the Solid Waste Disposal Authority of the city, its city business license may be revoked?

2. Do these ordinances constitute an undue burden on interstate commerce in violation of the U.S. Constitution and federal statutes?
3. Do the enforcement provisions of these ordinances violate Section 103 of the Constitution of Alabama 1901?
4. Do the enforcement provisions of these ordinances impair the obligations of contracts in violation of Section 95 of the Constitution of Alabama 1901?

#### FACTS AND ANALYSIS

The City of Huntsville has the statutory authority under what is commonly known as the Solid Waste Disposal Act to adopt rules and regulations through a city ordinance that provides for mandatory public participation in and subscription to a city-owned solid waste collection and disposal facility. Code of Alabama 1975, §22-27-3(2), in part, read as follows:

"Any county commission or municipal governing body providing services to the public under the provisions of this article shall have the power and authority by resolution or ordinance to adopt rules and regulations providing for mandatory public participation in and subscription to such system of services. . . . Every person, household, business, industry or property generating solid wastes, garbage or ash as defined in this section shall participate in and subscribe to such system of service unless granted a certificate of exception as provided in subsection (g) of this section. . . ." [Emphasis added.]

The exception provision in subsection (g) provides for a certificate of exception process whereby a person, household, business, industry or any property owner may store, haul and dispose of their own solid wastes. In the case of a business

or industry, application for this exception is to be made through the Alabama Department of Environmental Management.

Code of Alabama 1975, §22-27-7 provides that any person that violates any provision of the Solid Waste Disposal Act found at Code of Alabama 1975, §22-27-1, et seq., or any rule or regulation made pursuant to the article shall be guilty and upon conviction shall pay a fine of not less than \$50.00 or more than \$200.00. If such violation is a continuing one, each day of violation shall constitute a separate offense and shall be punished accordingly.

There is additional statutory and judicial authority for the City of Huntsville adopting rules and regulations pursuant to the operation of a city-owned solid waste collection and disposal facility. A municipality has the power to maintain the health and cleanliness of the city or town within its limits and police jurisdiction and to enact ordinances to this effect. Code of Alabama 1975, §§11-45-1, 11-47-130, and 11-47-131. Wheat v. Ramsey, 224 So.2d 649 (1969). A city may regulate, through its police power, the protection of its citizens' health as long as this power is not applied capriciously or arbitrarily. Pritchett v. Nathan Rodgers Construction and Realty Company, 379 So.2d 545 (Ala. 1979).

Based on the above, it is the opinion of the Attorney General that an ordinance requiring that all "acceptable waste" which is generated, occurs, or accumulates in the city and which is collected or transported by "private collectors or haulers" be delivered to the Solid Waste Disposal Authority of the City is valid.

Questions, 2, 3, and 4 contained in your opinion request deal with state and federal constitutional questions. It is the general policy of this office not to rule on the constitutionality of ordinances as determinations of such are within the province of the courts.

#### CONCLUSION

The City of Huntsville has the power and authority to adopt rules and regulations by city ordinance to provide for the mandatory participation in the Solid Waste Disposal Authority of the City.

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I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
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BY:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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