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APR 26 1995

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Honorable Joe B. Thompson, Jr.
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Solid Waste Disposal - Solid
Waste Disposal Authorities -
Fees - Funds

County commissions or
municipalities undertaking
the responsibility for
providing and collecting
such fees therefor may, but
are not required, to
disburse funds within
cooperating areas or
districts under Code of
Alabama 1975, § 22-27-5(a).

Dear Mr. Thompson:

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

QUESTION 1

Must certain fees, charges and rates paid
by the Escambia County Environmental
Corporation to the Solid Waste Disposal
Authority of Escambia County be used by
the County Commission for the specific
purpose of administering solid waste
disposal under the Alabama Solid Wastes
Disposal Act, Code of Alabama 1975,
§ 22-27-1, et seq., or may these funds

be deposited to a general fund and be used for other purposes?

FACTS AND ANALYSIS

Your request presents the following additional facts:

On January 16, 1992, the Solid Waste Disposal Authority of Escambia County, Alabama, a public corporation (herein after "Authority") and the Escambia County Environmental Corporation (herein after "ECEC") entered into an agreement (amended April 13, 1993) wherein ECEC agreed to construct and operate a regional sanitary solid waste landfill and provide solid waste disposal services to the citizens of Escambia County. Under this agreement, as amended, the authorized service area covers a twenty-one county area, including four Florida counties and seventeen Alabama counties. According to § 17 of the amended agreement, entitled Host Fees, ECEC agreed to pay to the Authority on an annual basis a fee based upon the tonnage of solid waste for which ECEC received payment during the preceding year. Under the agreement between ECEC and the Authority this fee is to be determined according to a graduated schedule. On April 13, 1993, the Escambia County Commission and the Authority entered into an agreement wherein the Authority agreed to pay to the County Commission all host fees received from ECEC. The City of Brewton now wishes to determine whether said funds received by the Authority must be used by the Escambia County Commission specifically for the purpose of administering solid waste pursuant to the provisions of the Solid Wastes Disposal Act, Code of Alabama 1975, § 22-27-1, et seq., or whether said funds may be deposited into a general fund and used for other purposes.

Code of Alabama 1975, § 36-15-20 states in pertinent part as follows:

"Any mayor, city council or like governing body of an incorporated municipality must submit with the request for his opinion a resolution adopted by the governing body of the municipality, setting forth the facts showing the nature and character of the question which makes the advice or opinion sought necessary to the present performance of some official act that such officer or council must immediately perform."
(Emphasis added.)

CONCLUSION

The manner in which the county governing body expends funds is a decision which must be made by that body. That decision is not related to the present performance of some official act that the city council must immediately perform. We, therefore, respectfully decline to address this question at this time.

QUESTION 2

If said funds must be used for the specific purpose of administering solid waste disposal under Alabama's Solid Wastes Disposal Act, then should such funds be prorated, disbursed and shared with cooperating areas, districts or municipalities?

FACTS AND ANALYSIS

As discussed in the response to your first question, the language employed by the legislature in § 22-27-5(a) states that county commissions or municipalities ". . . may establish fees, charges and rates and may collect and disburse funds within cooperating areas or districts, inside or outside the corporate limits of municipalities or inside or outside the county boundaries. . . . (Emphasis added.)

Honorable Joe B. Thompson, Jr.
Page 4

The use by the legislature of permissive language, such as the word "may" in both instances, indicates that this provision of the statute was intended by the legislature to be directory in nature rather than mandatory. "When the provision of a statute is the essence of the thing to be done, it is 'mandatory'; where a provision relates to form and manner, or where compliance is a matter of convenience, it is 'directory.'" Mobile County Executive Republican Committee v. Mandeville, 363 So.2d 754 (Ala. 1978). Thus construed, this provision allows, but does not require counties or municipalities to collect and disburse or share funds "within cooperating areas or districts, inside or outside the corporate limits of municipalities or inside or outside the county boundaries." Code of Alabama 1975, § 22-27-5(a).

CONCLUSION

It is, therefore, the opinion of this office that counties or municipalities may, but are not required, to disburse or share funds collected pursuant to § 22-27-5(a) with cooperating areas or district.

I hope this opinion sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact Robert Tambling of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/RT/
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