

OFFICE OF THE ATTORNEY GENERAL

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Honorable Harvey C. Watson
Mayor, City of Pell City
1905 First Avenue, North
Pell City, AL 35125

Municipalities - Solid Waste
Disposal - Contracts -
Competitive Bid Law

Municipalities may sign a contract to have garbage collected by independent contractor under conditions. A city may amend its garbage collection contract after it has been signed but may not use such amendment process to alter the specifications that were the basis of the competitive bidding process. Nor may the amendment process be used to frustrate competitive bidding process. City may amend an ordinance which sets fees and levies for collection of garbage.

Dear Mayor Watson:

The Attorney General is in receipt of your request for an opinion which addresses the following questions:

"In view of the fact that the City of Pell City adopted an Ordinance in 1972, Ordinance 72-352 attached, and amended this Ordinance in 1980, Ordinance 80-546, can the City legally request bids and sign a contract to have the garbage picked up by an independent contractor? Copies of the bid request and bids received are also enclosed.

Can the contract, once it has been signed, be amended by the City and the Contractor? See proposed amendment attached.

Can the City amend the garbage ordinance by deleting that section pertaining to fees and levies for the service? Proposed ordinance making the changes is attached."

State law, Section 22-27-5, Code of Alabama 1975, authorizes a municipality to provide garbage service itself or by a service contract or it may franchise out garbage service. The pertinent part of Section 22-27-5 is quoted below:

§22-27-5. Authority of localities to establish charges, fees, etc., and enter into mutual agreements or contracts; licensing of private or corporate agencies; nonpayment of fees, etc.

(a) Fees, etc.; mutual agreements or contracts. -- The county commission or municipality undertaking the responsibility for providing services to the public under this article 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 of county boundaries, for the specific purpose of administering this article and providing and operating a solid waste program. Also, said county commission or public authority may enter into mutual agreements or contracts with the government bodies of other counties, municipalities, corporations or individuals, where deemed to be mutually economical and feasible, to jointly or individually collect, haul and/or dispose of solid wastes generated within the cooperating area. All contracts or mutual agreements under this article shall be subject to review by the health officer, and all such contracts and agreements shall be subject to cancellation upon 30 days' notice from said health officer any time said contracts or agreements fail

to be in the best interest of the health, safety and welfare of the citizens residing in the affected area.

(b) Private or corporate agencies. -- Individuals, corporations, partnerships or other agencies engaging in the collection and disposal of solid wastes are subject to this article. Governing bodies may assign territories, approve or disapprove disposal sites, with the concurrence of the health department, and shall establish and collect annual license fees from such firms and set rate schedules if a service fee is charged.
(Emphasis added)

Also, see, Birmingham Waterworks Co. v. City of Birmingham, 211 F. 497 (1914); City of Birmingham v. Birmingham Water Works Co., 213 F. 450, 130 C.C.A. 96 and Hillard v. City of Mobile, 47 So.2d 162, 253 Ala. 676, in which municipalities under their general authority have the authority to contract for the furnishing of service such as water and of fire protection respectively.

While the city has the option to contract out the collection of garbage, the city had by virtue of its 1972 ordinance, as amended in 1980, elected to collect its own garbage and properly dispose of it. That ordinance should be amended or repealed to provide the option of contracting out this garbage collection service.

Consequently, it is our opinion that the city may take bids for contracting out its garbage service in accordance with state law, but that the city's current ordinance should be repealed or amended to properly reflect the fact that the city is no longer collecting garbage itself.

With regard to question number 2, we are of the opinion that while it may be possible to amend a contract between the city and its contractor by consent of both parties, such amendment process cannot be used to alter the contract so that it no longer conforms to the bid specifications. Nor could the amendment process be used to circumvent or frustrate the competitive bidding process.

With regard to question number 3, we are of the opinion, as alluded to earlier, that the city may amend or even repeal its garbage collection ordinance.

Generally, "the power to enact ordinances and by-laws necessarily implies power in the same body to amend its enactments unless the power is restricted in the law conferring the right to enact ordinances and this power is a continuing one." 62 CJS § 434(b).

Also, it should be noted that this opinion has been issued without benefit of reviewing the subject contract. Consequently, we reserve the right to revise or alter this opinion based upon a subsequent review of such contract.

We hope that we have sufficiently addressed your questions and if we may be of further assistance, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By:



R. CRAIG KNEISEL
ASSISTANT ATTORNEY GENERAL

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