



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

October 24, 2000

Jim Ryan

ATTORNEY GENERAL

FILE NO. 00-015

TOWNSHIPS:

Refuse Collection and Recycling

The Honorable John W. Maitland, Jr.
Assistant Majority Leader
State Senator, 44th District
525 North East Street
Bloomington, Illinois 61701

Dear Senator Maitland:

I have your letter wherein you inquire regarding the authority of a township to contract with a private, business corporation for the purpose of providing for the collection and disposal of waste and recyclables from residences within the unincorporated areas of the township, as well as commercial waste generated by the township. It is anticipated that such a contract would establish an exclusive franchise in the contractor, and would provide for the collection of fees by the contractor from residential users of the service. You have inquired whether referendum approval is a prerequisite to the exercise of such authority, and whether, in the absence of referendum approval, the township may implement such a plan through an intergovernmen-

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tal agreement between the township and the county. For the reasons hereinafter stated, it is my opinion that referendum approval is a prerequisite to the contemplated contract by the township. Moreover, the referendum requirement cannot be circumvented through the use of an intergovernmental agreement.

I note, initially, that a township appears to have the authority to contract for the removal of waste generated by the township under its authority to pay township charges, including contingent expenses necessarily incurred for the use and benefit of the township. (60 ILCS 1/80-35 (West 1998).) Therefore, I will direct my comments to the other aspects of the proposed contract.

Townships and other non-home-rule units of local government have only those powers that are expressly granted to them by the constitution and statutes, together with those powers that may be implied therefrom as being necessary to carry out the express powers. (Ill. Const. 1970, art. VII, §§ 7, 8; see Redmond v. Novak (1981), 86 Ill. 2d 374, 382.) Article 210 of the Township Code (60 ILCS 1/210-5 et seq. (West 1998)), first enacted as Public Act 77-1827, effective October 1, 1972, expressly authorizes a township, with referendum approval of the electors of the unincorporated area of the township, to contract for the collection, recycling and disposal of ashes, refuse and

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garbage. Such a contract may be funded either by a tax upon the areas of the township served or by direct payment of fees by the users of the services. (60 ILCS 1/210-15 (West 1998).)

Further, subsection 85-13(f) of the Township Code (60 ILCS 1/85-13(f) (West 1998)) provides:

" * * *

(f) The township board may enter into direct agreements with for-profit corporations or other business entities to carry out recycling programs in unincorporated areas of the township.

* * *

"

This provision was added to the section on general township services by Public Act 86-475, effective January 1, 1990.

From the information you have provided, it appears that the contemplated contract for waste disposal and recycling falls squarely within the authority granted to townships by article 210 of the Township Code. Exercise of such authority, therefore, is contingent upon passage by the township board of a resolution requesting that the question be submitted to the electors at a regularly scheduled election (60 ILCS 1/210-5 (West 1998)), and its approval by a majority of the electors.

Section 85-13 of the Township Code does not provide alternative authority for the township to enter into a general waste disposal contract. Subsection 85-13(f) is limited to

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agreements to carry out recycling programs in unincorporated areas of the township. Nothing in section 85-13 refers to waste collection generally. Where there are two statutory provisions, one general and one specific, the particular provision must prevail. (Bowes v. City of Chicago (1954), 3 Ill. 2d 175, cert. denied, 348 U.S. 857, 75 S. Ct. 81, 99 L. Ed. 675.) Article 210 pertains specifically to waste collection and disposal, as well as recycling. The limited provision for recycling programs which has been added to the general powers enumerated in section 85-13 does not repeal by implication the referendum requirement in article 210, but operates as a narrow exception to that requirement.

With respect to whether a township can provide for such services through an intergovernmental agreement with the county, although article VII, section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1998)) authorize the sharing and joint exercise of powers by units of local government, they are not an independent grant of authority and cannot authorize an entity to do that which is not otherwise authorized or permitted by law. See, e.g., Ill. Att'y Gen. Op. No. NP-636, issued October 17, 1973; Ill. Att'y Gen. Op. No. NP-637, issued October 17, 1973; Ill.

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Att'y Gen. Op. No. NP-712, issued March 7, 1974; 1978 Ill. Att'y Gen. Op. 165; 1991 Ill. Att'y Gen. Op. 158.

Counties have been granted much broader authority than townships with respect to waste collection and disposal. Counties may develop solid waste plans pursuant to section 5-15010 of the Counties Code (55 ILCS 5/5-15010 (West 1998)), which authorizes the adoption of ordinances, licensing, contracting and other means necessary to carry out such a plan. Further, section 5-1048 of the Counties Code (55 ILCS 5/5-1048 (West 1998)) authorizes a county to contract for waste collection, disposal and recycling:

"Contracts for garbage disposal or recycling. A county board may contract with any city, village, incorporated town, or any person, corporation, or other county, or any agency created by intergovernmental agreement, for a period of not less than one and not more than 30 years, in relation to the collection and final disposition or to the collection alone or final disposition alone of garbage, waste refuse, and ashes. The county board may also contract with an organization or institution organized and conducted on a not-for-profit basis for the purpose of recycling garbage and refuse. The governing body shall authorize the execution of the contract by resolution, and shall appoint a committee of no more than three of its own members to serve with committees from the other contracting parties as a joint subcommittee on garbage and refuse disposal, or collection, or collection and disposal, as the case may be. If the contract is with a non-profit entity, the governing body shall

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appoint a committee of not more than three of its own members to oversee fulfillment of the contract."

Section 5-15010 clearly contemplates the development of a county-wide waste management plan by an appointed planning committee. The information you have provided, however, does not suggest that the proposed contract would be part of a county-wide program. An intergovernmental agreement by which the county would facilitate waste collection in a single township, without relation to waste management in surrounding areas, is not consistent with the apparent legislative intent of the section.

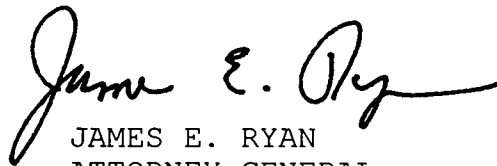
Similarly, section 5-1048 permits a county to contract with other counties, municipalities or private entities for the collection and disposal of waste, and with a not-for-profit organization for the purpose of recycling garbage or refuse. Conspicuously absent from the provisions of section 5-1048 is any reference to contracting with townships for waste collection services.

In opinion No. 85-010, issued July 18, 1985 (1991 Ill. Att'y Gen. Op. 158, 161), Attorney General Hartigan concluded that an intergovernmental agreement, the effect of which would be to contravene an existing and explicit statutory prohibition, would not be valid. The reasoning of that opinion is equally applicable to this issue. The effect of an intergovernmental

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agreement between a township and a county in these circumstances would be to circumvent the statutory requirement that referendum approval be obtained before a township may establish a general waste collection and disposal plan. It would be contrary to the intent of the General Assembly in enacting article 210 of the Township Code for a township to avoid the requirements of that article through the use of an intergovernmental agreement to implement county powers within the single township. Consequently, it is my opinion that a township must seek referendum approval pursuant to article 210 of the Township Code prior to entering into a comprehensive waste collection and disposal and recycling contract. A township may not circumvent the referendum requirement by entering into an intergovernmental agreement with the county.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JAMES E. RYAN
ATTORNEY GENERAL