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Solid Waste Collection and Disposal

There is no subject of more constant interest to municipal officials than solid waste collection and disposal. Without adequate ordinances and careful planning, municipalities are helpless to deal with this growing problem. As landfill space continues to shrink, municipal governments must be knowledgeable about federal and state statutes and regulations concerning the collection and disposal of garbage and how localities can comply with those laws. Garbage collection and disposal is clearly a multi-jurisdictional problem. This article provides an overview and basic guidance for municipalities on the subject of waste disposal.

Power to Adopt Ordinances

All cities and towns are given the power to maintain the health and cleanliness of the city or town within the corporate limits and police jurisdiction under Section 11-47-130, Code of Alabama 1975. Section 11-45-1, Code of Alabama 1975, allows municipalities to adopt ordinances and resolutions to carry out this power. Section 11-47-131, Code of Alabama 1975, also gives municipalities the power to adopt ordinances and regulations deemed necessary to ensure good sanitary conditions in public places or on private premises. The Attorney General, interpreting Section 11-40-10, Code of Alabama 1975, advised Hon. James Powell on September 21, 1977, that a municipality may collect garbage in its police jurisdiction even when the police jurisdiction extends across county lines. The police jurisdiction of municipalities of less than 6,000 inhabitants is one and one-half miles from the corporate limits while the police jurisdiction of cities of 6,000 or more inhabitants extends three miles from the corporate limits. Section 11-40-10, Code of Alabama 1975.

The Alabama Supreme Court, in *Wheat v. Ramsey*, 224 So.2d 649 (1969), held that the governing body of a city has the legal authority under its police power to adopt reasonable health and sanitary ordinances to protect the public health and promote the general welfare. Municipal ordinances carry a presumption of validity. *Chadwick v. Hammondville*, 120 So.2d 899 (Ala. 1960). However, the ordinance must bear a substantial relation to the public health, safety or welfare. *Russellville v. Vulcan Materials Co.*, 382 So.2d 525 (Ala. 1980). Pursuant to Section 22-27-3, Code of Alabama 1975, any municipal governing body which is providing services to the public under the Solid Wastes Disposal Act, may adopt a resolution or ordinance to make participation in the solid waste disposal service mandatory. This would require every person, household, business, industry or property generating solid wastes, garbage or ash as defined in this section to participate in and subscribe to the system unless granted a certificate of exception, as provided in subsection (g). "Provided, however, any individual, household, business, industry or property generating solid wastes that were sharing service for a period of at least 6 months may continue to share service without filing for a certificate of exception." Section 22-27-3(a)(2), Code of Alabama 1975.

Enforcement of garbage ordinances is a constant headache. Violations of most municipal ordinances are punishable by criminal sanctions authorized by Section 11-45-9, Code of Alabama 1975. This section grants a municipality the power to enforce its ordinances with a penalty of up to six months in jail and a fine of up to $500. However, the Alabama Supreme Court has held, in *Eclectic v. Mays*, 547 So.2d 96 (1989), that municipalities may not assess these criminal penalties against persons who fail to comply with solid waste disposal ordinances. One factor the Court did not address, however, is the fact that the Solid Waste Disposal Act states that anyone who fails to pay a fee for garbage services may be fined from $50 to $200. Section 22-27-7, Code of Alabama 1975.

Following *Mays*, the Attorney General issued an opinion upholding the power of municipalities to assess criminal penalties pursuant to Section 22-27-7. AGO 1993-0243. However, this power is not self-executing. A municipality would have to adopt the penalties in its own ordinance to enforce the violation in municipal court. Thus, although the fine for violation of a garbage disposal ordinance is limited, municipalities can clearly enforce these ordinances with criminal sanctions in municipal court. In addition to any other remedy provided in this act, a municipality may bring a civil action in circuit court to compel the mandatory participation and subscription in the local service. Section 22-27-3(a)(2), Code of Alabama 1975.

The Attorney General has held that a city may place a duty on garbage customers to provide the garbage department with updated contact information if the customers are not receiving garbage bills in the mail. The city is authorized to adopt a payment plan to bring delinquent accounts up to date. Section 22-27-5 of the Code provides the city with the option to discontinue service for failure to pay service fees. Section 22-27-5(e) of the Code also authorizes a city to pursue civil penalties, and section 22-27-7 authorizes a municipality to pursue criminal penalties for failure to pay service fees. The city may publish the names and account balances of delinquent garbage customers. AGO 2010-0106.

Fees for Services

Section 11-47-135, Code of Alabama 1975, states that all municipalities have the power to establish facilities for the destruction of garbage or to otherwise dispose of garbage, either inside or outside the city limits. In addition, municipalities can haul trash and garbage, cause its destruction, and fix and collect a reasonable fee for the service.

This statute specifically authorizes a fee for the collection and disposal of trash and garbage, provided that the fees are reasonable. Further, the Attorney General has held that a municipality may require its residents use the garbage collection service and may charge a fee for the service. See, AGO to Hon. P. W. Thrasher, February 4, 1966, and AGO 1982-0294 (to Hon. Gene L. Hughes, April 23, 1982). A municipality that provides or makes available solid waste collection or disposal services may adopt a resolution or ordinance setting forth rules and regulations requiring the identification of all members of a household to ensure mandatory participation in and subscription to the services. AGO 2022-0010. The collection and disposal of garbage and trash is necessary to the public health and each citizen may be required to share the cost.

Charges for garbage collection services are service charges, not taxes, even when mandatory. *Martin v. Trussville*, 376 So.2d 1089 (Ala. Civ. App. 1979). Thus, the amount of the fee must be reasonably related to the expense of the garbage service. *Eclectic v. Mays*, 547 So.2d 96 (Ala. 1989). In 2021, the Legislature amended Section 22-27-5, of the Code of Alabama to provide that any municipality providing solid waste services with a solid waste reserve account in excess of one million dollars ($1,000,000) may spend the excess amounts over one million dollars in the solid waste reserve account for any lawful purposes in the best interest of the municipality. See Section 22-27-5(f), Code of Alabama 1975.

A municipality may not impose protective covenants requiring owners of patio homes, garden homes and town homes to pay extra for the collection and disposal of their garbage while the municipality provides these services to other residents without extra charge. Nor can the municipality provide certain residents with an inferior method of disposal. AGO 1997-0122.

Sections 11-89A-1 through 11-89A-25, Code of Alabama 1975, authorize the creation of solid waste disposal authorities to jointly dispose of the solid waste of two or more counties or municipalities. However, Section 22-27-3(a)(4) states that no county commission shall provide solid waste collection and disposal services within the corporate limits of a municipality without the express consent of the municipal governing body of such municipality nor shall any municipality provide solid waste collection and disposal services outside its corporate limits without the express consent of the county commission of the county in which it is situated.

Exemptions

Pursuant to Section 22-27-3(g), Code of Alabama 1975, ordinances which make municipal garbage collection services mandatory on all citizens must allow for the exemption of citizens who dispose of their own garbage in accordance with special permits granted by the State Health Department. AGO to Dr. Ira L. Myers, May 3, 1971 and AGO 1995-0329.

Additionally, persons whose sole income is derived from Social Security or Veterans' benefits are exempt from paying garbage collection fees. The household seeking to claim the exemption must present proof of the household's source of income to the County Health Officer. This may be granted at any time the household qualifies for the exemption. The County Health Officer or his designee shall forward the exemption request and proof to the solid waste officer or municipal governing body upon receipt. The exemption shall apply only so long as the household's sole source of income is Social Security or Veterans' benefits. Any household receiving this exemption will need to request it each year. Section 22-27-3(a)(3)a., Code of Alabama 1975. A municipality must adopt a resolution to allow the Veteran's benefit exemption to apply to households whose income is above the current federal poverty level. Section 22-27-3(a)(3)b, Code of Alabama 1975.

The Attorney General has issued several opinions concerning the Social Security exemption from the payment of garbage service fees. In AGO 1993-0102, the Attorney General held that persons whose sole income is derived from Social Security benefits, Supplemental Security Income (SSI), or a combination of the two, are exempt from paying garbage fees. In another opinion, the Attorney General ruled that food stamps cannot be counted as income in determining whether an individual is eligible for the exemption. AGO 1993-0314. Further, where an individual's sole income comes from Social Security and veterans' benefits which directly reduce the Social Security benefits, the individual is eligible for the exemption. AGO 1994-0104. The exemption from payment of solid waste disposal fees for anyone whose sole source of income is Social Security

benefits applies to every county or municipality that provides solid waste disposal services. AGO 1998-0075. A municipality charging fees for solid waste collection services, whether through a private corporation or otherwise, must grant an exemption for any household whose sole source of income is Social Security benefits. AGO 1998-0099.

In AGO 1995-0080, the Attorney General ruled that it is the responsibility of eligible individuals to claim the exemption. However, although the Attorney General stated that a municipality did not have a duty to seek out eligible persons and inform them of the exemption, the Attorney General advised municipalities to give some type of notice to the public that the exemption exists. The opinion was silent as to how notice should be given. Perhaps the best method would be through a direct mailing, either in the bill or at the time a person applies to receive garbage service.

In addition to these exemptions, a municipality may provide other exemptions in its garbage ordinance. For example, the ordinance may provide for free garbage collection service to its elderly. AGO 1979-0038 (to Hon. Randall Shedd, August 10, 1979); AGO 1982-0171 (to Hon. Kenneth Moss, February 5, 1982); and AGO 1987-0216. To qualify for the statutory solid waste exemption, a person and his or her household must either be eligible for and have no other income than Social Security or, where authorized by local law, his or her household's total income must not exceed 75 percent of the federal poverty level. AGO 1999-0118.

In *Limestone County v. Lambert*, 674 So.2d 618 (1996), the Alabama Court of Civil Appeals ruled that a property owner did not qualify for the shared-use exemption from the county's mandatory garbage collection charge. In *Owens v. Bentley*, 675 So.2d 476 (1996), the Alabama Court of Civil Appeals held that a property owner had no claim against the county for denying his request for an exemption from the mandatory solid waste collection service.

Collection of Fees

Many cities and towns collect garbage fees through billings for water or utility services. See, AGO 1990-0301. This is perhaps the surest method of collection and generally is the most inexpensive. Further, the average citizen would prefer to make only one payment to the city for services rendered. But, in *Eclectic v. Mays*, 547 So.2d 96 (1989), the Alabama Supreme Court held that if a municipality uses utility bills to collect garbage fees pursuant to a mandatory garbage service, the municipality must have a method in place to collect the garbage fees from those who do not participate in the utility service.

Termination of Service Upon Nonpayment

Many municipalities have ordinance provisions that terminate other municipal services if a customer fails to pay the garbage collection fee. The Attorney General advised Hon. Clarence F. Rhea on December 11, 1972, that a municipality could contract with a municipal utility board, under Alabama Code Section 11-40-1, under which the board would have the authority and duty to collect the garbage fee imposed by the municipality. The Attorney General was also of the opinion that this power was broad enough to allow the board to discontinue its water and gas service when a customer refused to pay the garbage collection fee. In a later Opinion, though, the Attorney General advised Mayor Raymond C. Elwell on May 27, 1974, that a municipality has no authority to discontinue water service when the garbage collection fee is not paid. And, in AGO 1993-0243, the Attorney General held that municipalities have no authority to discontinue any utility service for failure to pay a garbage fee.

Additionally, some courts have held that termination of water service due to nonpayment of a mandatory trash collection fee is in violation of substantive due process of the Fourteenth Amendment to the U.S. Constitution. *Uhl v. Ness City, Kansas*, 590 F.2d 839 (10th Cir. 1979). The League recommends that municipalities do not cut off other utility services for nonpayment of the garbage fee.

Municipalities can terminate garbage collection service for nonpayment. This was made clear in *Town of Eclectic v. Mays*, 547 So.2d 96 (Ala. 1989). However, in *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978), the U.S. Supreme Court ruled that a municipal utility must provide its customers with an administrative procedure for hearing complaints prior to termination of service. The Court held that final notice, contained in municipal utility bills and stating that payment was overdue and that service would be discontinued if payment was not made by a certain date, did not reasonably inform customers of the availability of or procedure for, protesting the proposed termination of utility service and thus deprived customers of notice to which they were entitled under the Due Process Clause. The expectation of continued utility service is considered to be a property interest entitled to the due process protection of the Fourteenth Amendment to the U.S. Constitution on the grounds that a municipal utility service is a necessity of modern life. *Goss v. Lopez*, 419 U.S. 565 (1975); see also, *Golden v. Public Utilities Commission*, 592 P.2d 289 (Cal. 1979).

However, these cases do not prohibit a municipality from terminating garbage service for failure to pay service charges which are justly due. *Craft* only says that notice to the utility customer that service will be terminated unless a delinquent bill is paid within a specified time is not sufficient. *Craft* at 14. A customer must also be notified that he or she is entitled

to a hearing at which objection to the termination may be presented prior to termination. No hearing is necessary if not requested by the customer. No formal hearing is necessary. The utility superintendent or other city officer may be designated to conduct the hearing. If the amount of the bill owed is in dispute, the hearing should be held by some person authorized to make corrections, if necessary.

The League recommends following these procedures when terminating garbage service as well as utility services.

Municipalities should designate an employee to handle disputed claims. This employee should be authorized to adjust disputed bills and should be empowered to reinstate service once the dispute has been resolved.

If a garbage fee becomes delinquent, notice should be sent to the person responsible for paying the bill. The notice should be substantially as follows:

> "**Final Notice:** Your garbage service [or other specified utility] will be disconnected if this bill is not paid by [date]. If there is any dispute concerning the amount due on this bill, you may call [title or name of individual] at [phone number], or bring this bill to the office of the above individual at [address] between the hours of [time] Monday through Friday."

The court failed to discuss the length of time for the notice prior to disconnecting service. There is no magic test for to determine the amount of notice that is required, except that it must be reasonable. *Goss v. Lopez*, 419 U.S. 565 (1975). The League recommends that the notice be five to 10 days in length.

The person reviewing disputed bills should carefully review the problem and make accurate notes on any facts presented by the customer, offsetting facts from the utility and the disposition of the dispute. In every case, some finality to the dispute must be reached before the time set for disconnecting the utility service or discontinuing garbage service. It must be clear to the customer what decision has been made regarding the dispute and what action will be taken.

The Supreme Court's opinion in *Craft* dealt only with the notice required to be given to the person paying for the utility service. *Craft* at 13. The court did not discuss the question of whether or not the utility must notify tenants as well as landlords in cases where the user of the utility service is not the party responsible for payment.

Under the Solid Waste and Recyclable Materials Management Act, if fees are not paid within 30 days, service may be suspended, or the public authority may proceed to recover the amount of any delinquency with interest. Section 22-27-5, Code of Alabama 1975. However, the Attorney General's office has held that solid waste disposal authorities or any other local authority do not have the power to grant extensions of time to apply for an exemption provided under Section 22-273(a) of the Code of Alabama 1975. AGO 2000-0141.

Alternative to Termination of Service

Federal cases have suggested that, rather than terminating service, cities should enforce their waste disposal programs through less drastic alternatives such as penalty provisions, civil actions, or liens against real property. *Uhl v. Ness City, Kansas*, 590 F.2d 839 (10th Cir. 1979). The Alabama Supreme Court in *Alabama State Board of Health v. Chambers County*, 335 So.2d 653 (1976), held that the Legislature has the right to permissively authorize counties and municipalities to establish and maintain waste disposal systems and to regulate the methods used by counties and municipalities electing to exercise such authority.

In *Eclectic v. Mays*, 547 So.2d 96 (Ala. 1989), the court held that Section 22-27-5(e), Code of Alabama 1975, limits the remedies for failure to pay a garbage fee to suspension of service and civil actions to recover unpaid fees. However, violations of the Solid Waste Disposal Act are misdemeanors with fines of not less than $50 nor more than $200. Section 22-27-7, Code of Alabama 1975. As noted above, municipalities may adopt this penalty as a violation of a municipal ordinance. AGO 1993-0243.

Municipalities may wish to file suit for unpaid fees in the Small Claims Court under the Alabama Small Claims Rules adopted on November 23, 1976.

Alternatives to Public Collection

With the rising costs of public garbage collection and disposal, a municipality may find it more advantageous to employ independent contractors to implement the city disposal program or grant a franchise, under Section 220 of the Alabama Constitution, to an individual, partnership, or firm to provide for garbage collection services. A municipality might also want to consider one of these alternatives for liability reasons. Cities and towns are liable for damages for injury done to another through the neglect, carelessness or unskillfulness of agents, officers or employees of the municipality, and garbage collection is a major source of liability problems. *Bessemer v. Chambers*, 242 Ala. 666, 8 So.2d 163 (Ala. 1942).

Under Section 11-40-1, Code of Alabama 1975, a municipality may contract and be contracted with. However, municipal contracts involving expenditures of $15,000 or more are subject to the Competitive Bid Law found in Sections 41-16-50 through 41-16-63, Code of Alabama 1975. Contracts between public entities are not required to be competitively bid. Solid waste disposal contracts between the County and municipalities are not required to be let by competitive bidding. AGO 2008-0093.

The Attorney General advised Hon. Arthur Lee Taylor on May 24, 1977, that a city may enter into contracts with private firms to collect, dispose of and destroy garbage. Such contracts, however, may not be let for periods in excess of three years due to the restrictions on the length of such contracts found in the bid laws. Section 41-16-51, Code of Alabama 1975, exempts contracts for renewal of sanitation or recycling services from the bid laws, although solid waste contracts can be renewed without rebidding, provided the terms of the contract are not changed. Section 41-16-51(10), Code of Alabama 1975; AGO 1993-0310. The Attorney General's office has held that a municipality may contract with a private entity to collect delinquent garbage fees at a fixed rate, a percentage of the amount collected, or a fixed percentage of the total amount owed. AGO 1998-0107.

An alternative to employing an independent contractor is to grant a franchise to a private business to collect garbage in the city. Under the Alabama Constitution, Section 220, municipalities may permit persons, firms, associations or corporations to use the streets or public places for the operation of any public utility or private enterprise. The "consent" in this section has uniformly been held to be a franchise. *Bowman v. Birmingham Transit Co.*, 280 F.2d 531 (5th Cir. 1960). In cities of 6,000 or more, public utility franchises are limited to a maximum term of 30 years by Section 228 of the Alabama Constitution. If the local government grants only a franchise and spends no local money, the bid law does not apply. AGO to Dr. Ira L. Myers, July 29, 1974, and AGO 1981-0025 (to Hon. G. William Noble, October 20, 1980).

However, in granting franchises, municipalities must be careful not to violate constitutional provisions which prohibit granting an exclusive franchise. In *Beavers v. County of Walker*, 645 So.2d 1365 (1994), the Alabama Supreme Court voided an agreement between BFI and Walker County on the grounds that the agreement amounted to an exclusive franchise to provide solid waste collection and, thus, should have been bid.

Solid Waste and Recyclable Materials Management Act

The Solid Waste and Recyclable Materials Management Act can be found in Sections 22-27-1 through 22-27-18, Code of Alabama 1975, as amended.

This comprehensive act charges the Alabama Department of Environmental Management (ADEM) with the implementation of its provisions and requires that county and municipal governing bodies accomplish solid waste management practices.

Of particular interest is the 1971 amendment to the Act, which states that a municipality, if it establishes fees or charges, may suspend services if fees are not presently paid and may recover any such delinquency by civil action. The Act also authorizes municipalities to enter into joint contracts with other municipalities or counties for the disposal of solid waste. Section 22-27-5, Code of Alabama 1975.

A 2008 amendment establishes the Department of Environmental Management as the state agency with primary regulatory authority over the management of solid waste in Alabama. Section 22-27-9(a), Code of Alabama 1975. Section 22-27-9(b) establishes the Alabama Department of Public Health as the state agency with authority over the collection and transportation of solid waste in Alabama, which include the provision of collection services by municipalities. Municipal collection of solid waste must be consistent with regulations adopted by the Department. See, Section 22-27-10, Code of Alabama 1975.

A 2011 amendment placed a 24-month moratorium on the issuance of permits by ADEM or any other state or local governmental agency to certain solid waste management facilities which receive or are intended to receive waste not generated by the permittee in order to allow adequate time for ADEM, the Solid Waste Management Advisory Committee, and the Alabama Department of Public Health to perform their responsibilities pursuant to Executive Order 8, and for the development of a comprehensive plan to identify the state's solid waste management needs. This amendment does provide a procedure to allow for a waiver to allow the issuance or modification of permits on a limited basis during the moratorium. See, Section 22-27-5.2, Code of Alabama, 1975. A 2012 amendment expended the moratorium until May 31, 2014. Act No. 2012-0434.

Solid Waste Management Plan

State law requires municipalities to submit to ADEM and maintain and implement "a plan for the management of solid waste generated within its boundaries." Ala. Code Section 22-27-47(a) (1975). Counties are also required to submit plans which municipalities can choose to participate in to meet this requirement. *Id.* Cities which do not choose to exclude themselves from their county's plan shall be responsible to share in the county's costs proportionately on a per capita basis. *Id.* The minimum requirements for the solid waste management plan can be found in Ala. Code Sections 22-27-47(b)(1) through 22-27-47(b)(13).

From time to time, ADEM will request to locate solid waste management facilities within a municipality's corporate limits pursuant to the State's Solid Waste Management Plan. Prior to issuing a permit, ADEM is required to consult the governing body of the municipality. Ala. Code Section 22-27-48(a) states

the governing body of a county or municipality has a responsibility for and the authority to assure the proper management of solid wastes generated within its jurisdiction in accord with its solid waste management plan. A governing body may assign territories and approve or disapprove disposal sites in its jurisdiction in accord with the plan approved for its jurisdiction.

Ala. Code Sections 22-27-48 provides criteria for the council to consider when determining whether to approve the issuance of a permit. Ala. Code Section 22-27-48.1 requires the entity seeking a permit to file an application with the municipality. This Section further requires public comment on the application and notice to the public and to certain affected landowners. Notice to the public must be provided by the following means:

1. Publishing a notice in a newspaper having general circulation, if one exists, within the affected community one day per week for a two-week period;
2. Broadcasting public service announcements submitted to a radio station that has general broadcast coverage within the affected community; and
3. Displaying a notice on the local governing body's website, if available.

Pursuant to Section 22-27-48.1, any printed notice by letter, newspaper, or electronically on a website, shall contain at a minimum the following:

1. A description of the application and approval process as provided in this chapter;
2. A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site;
3. A contact person from whom interested persons can obtain additional information and can review copies of both the local solid waste management plan and the application;
4. A description of the location where interested persons can obtain or can review copies of both the local solid waste management plan and the application, and the time frame for public hearings and involvement;
5. A description of how the public may submit written comments to the governing body.

Notice to the affected landowners must be sent by certified mail.

Not more than 45 days after the local governing body formally receives an application, the applicant shall conduct a public awareness session in the county or municipality in which the proposed facility is to be located, during which the applicant shall provide general information on the design and operation of the proposed facility and address questions and concerns voiced by members of the affected community. The time, date, and location of the public awareness session must be approved by the local governing body. The applicant, at its own expense, shall provide notice of the public awareness session by both printed and broadcast media beginning at least 30 days prior to the session. At least one representative of the local governing body shall attend each public awareness session.

The local approvement requirement also applies to modifications of permits for existing solid waste management facilities. Act 2023-290 limited the circumstances for when local approval of permit modifications is required to when the modification involves the following:

1. Increasing the service area.
2. Converting an industrial landfill or a construction and demolition landfill into a municipal solid waste landfill or converting a construction and demolition landfill into an industrial landfill.
3. Adding acreage to the area of the solid waste management facility's boundary in an amount equal to or less than 50 percent of the facility's existing boundary as specified in a resolution adopted by the local governing body. However, adding acreage in an amount greater than 50 percent of the facility's existing boundary is instead subject to the requirements for the approval of an affected local government provided in Section 22-27-48.1.
4. Changing the mode of transportation of solid waste to the solid waste management facility.
5. Increasing the average daily volume.

Operation of Landfills

In *Birmingham v. Scogin*, 115 So.2d 505 (1959), the Alabama Supreme Court, strongly indicated that every city has the obligation to carefully supervise the manner of operating its garbage disposal areas and ensure that the best methods of operation are employed. Failure to do so could result in the enjoining of garbage collection and disposal until errors are corrected.

The complaint in *Scogin* alleged that the city was operating a garbage dump and through carelessness had permitted it to become a health hazard. The complaint also stated that the city had failed, after demand, to abate the conditions and, as a result of the unsanitary conditions, the complainants were suffering damage. The dump was a landfill and was located in an "A-residential" zone. The facts showed that the city had purchased the property prior to the date the property of the complainants was purchased, and the city's witnesses testified that the sanitary landfill was being operated in a proper manner, i.e., the garbage was covered daily. Testimony was introduced to the effect that the city was doing a good job in controlling flies, roaches and rodents.

The court held that there can be no abatable nuisance in doing in a proper manner what is authorized by law. The city, under provisions of Section 11-47-135, Code of Alabama 1975, may operate a garbage disposal system. The court stated that, "The action of a governmental agency acting within its authority will not be controlled or revised by injunction." However, even though the operation was a governmental function, if a nuisance is created the nuisance is subject to being abated by an injunction. See, *Downey v. Jackson*, 65 So.2d 825 (Ala. 1953); *Bessemer v. Chambers*, 8 So.2d 163 (Ala. 1942).

The court, under the facts of *Scogin*, required the city to cover all garbage by 6:00 p.m. on the day in which the garbage is deposited but refused to issue a permanent injunction.

In addition, *Scogin* is important because the court held that zoning does not apply to the operation of a governmental function – such as garbage collection – by a municipality.

In *TransAmerican Waste Industries, Inc. v. Benson*, 690 So.2d 346 (1997), the Alabama Supreme court used a balancing test, balancing the urgent need for action on a landfill against the need to set aside a county commission's actions based on perceived deficiencies in the public notice, to find that notice was sufficient to apprise the pubic of the subject of the hearing. In a Tenth Circuit Court case, the court found that a municipal ordinance that prohibits the maintenance of hazardous waste in areas zoned for industrial use conflicts with the goals of CERCLA and is preempted. *U.S. v. Denver*, 100 F.3d 1509 (10th Cir. 1996).

The Attorney General's office has held that the proceeds from tipping fees at a solid waste landfill may be deposited into the county general fund, but the money must be earmarked for expenses related to the operation of the landfill. AGO 1998-0005.

In *Peake Excavating, Inc. v. Town Board of Hancock*, 93 F.3d 68 (2d Cir. 1996), the Second Circuit held that a municipal ordinance that prohibits the operation of a dump or the dumping of waste materials in the municipality, except at a municipally operated landfill or transfer station does not violate the Commerce Clause.

Similarly, the United States Supreme Court held in *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste*, 127 S.Ct. 1786 (U.S. 2007), that waste disposal is typically and traditionally a local government function and courts should be particularly hesitant to interfere with local government efforts in this area under the guise of the Commerce Clause. Any incidental burden on interstate commerce that resulted from application of county flow control ordinances, which required businesses hauling waste in counties to bring waste to facilities owned and operated by public benefit corporation, was not clearly excessive in relation to public benefits provided by these ordinances, which increased recycling and conferred significant health and environmental benefits on citizens of the counties.

Section 22-27-8 provides that all permitted operators of municipal solid waste landfills must establish and maintain financial assurance for proper closure, post-closure care, or corrective action in the form and amount specified by the Department of Environmental Management. This requirement is applicable to all municipal solid waste landfills required by federal law or regulations to demonstrate such assurance.

These assurances must be submitted as required by the Department. The financial assurance mechanism shall be maintained for the life of the municipal solid waste landfill, and for a period of not less than 30 years after closure, unless the owner or operator demonstrates to the director that a period less than 30 years is sufficient to protect human health and the environment and the director approves this demonstration, or the solid waste is removed and the Department determines that no waste or contamination remains at the site. The Department may extend post-closure care or corrective action periods for longer than 30 years when necessary to protect human health and the environment. In no event shall the Department require financial assurance or other requirements pursuant to this section which are more stringent than the Environmental Protection Agency requirements in effect at the time.

Beginning in October 1, 2008, generators of solid waste who dispose of the waste and management facilities permitted by the Department of Environmental Management must pay a disposal fee in accordance with Section 22-27-17 Code of Alabama 1975.

Conclusion

Every city is obligated to carefully supervise the operation of its garbage disposal areas and ensure that the best methods of operation are employed. Failure to do so could result in an injunction and possible tort liability. Additionally, municipalities must comply with federal and state regulations regarding the operation of landfills.

Selected Opinions and Court Decisions on Solid Waste Collection and Disposal

- Section 22-27-5, Code of Alabama 1975, does not authorize the state health officer to review contracts or mutual agreements for solid waste services between solid waste authorities and private contractors. AGO 1992-0037.
- Section 22-27-3, Code of Alabama 1975, does not exempt a company or individual who has a contract for waste disposal with a private company from participating in the county's solid waste disposal plan, unless a certificate of exemption has been issued pursuant to Section 22-27-3(g). AGO 1992-0169.
- In *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources*, 504 U.S. 353 (1992), the U.S. Supreme Court held that a Michigan statute which prohibits private landfill operators from accepting solid waste generated in another county, state or country discriminates against interstate commerce in violation of the Commerce Clause.
- Persons whose sole income is derived from Social Security benefits are exempted from solid waste disposal fees. AGO 1992-0346.
- Solid waste disposal is a governmental function. Solid waste contracts may extend beyond the term of the current administration. A change in an existing contract to provide for curbside recycling at no additional cost does not substantially alter the contract and it does not have to be bid. A municipality may not renew an existing solid waste contract without bidding unless the existing contract contains a renewal clause or an option to extend. AGO 1992-0352.
- Persons whose sole income is derived from Social Security benefits, Supplemental Security Income or a combination of the two, are exempt from paying solid waste disposal fees. AGO 1993-0102.
- Counties may award contracts for the collection of solid waste outside municipal corporate limits. AGO 1993-0213.
- A county may restrict the disposal of solid waste at a county-owned landfill to wastes generated within the county, provided that the county operates the landfill as a market participant and not as a market regulator. AGO 1993-0214. Note: Courts are reluctant to recognize the validity of these flow-control regulations. Any municipality considering this type of restriction should consult with the city attorney. However, see, *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste*, 127 S.Ct. 1786 (U.S. 2007).
- Municipalities may not discontinue other utility services for nonpayment of garbage fees. However, Section 22-27-7, Code of Alabama 1975, clearly authorizes imposition of criminal penalties. AGO 1993-0243.
- Renewal of a county solid waste landfill contract is not subject to competitive bid laws, provided the price remains the same and there is no substantial change in the terms of the contract. AGO 1993-0287.
- Section 22-27-5(a), Code of Alabama 1975, provides authority for county commissions to levy fees to operate a solid waste program. AGO 1993-0291.
- Municipalities may provide solid waste collection and disposal services outside their corporate limits with the consent of the county, even if the municipality charges different rates than the county. AGO 1993-0310.
- An agreement between a county and municipalities to allow the municipalities to continue to collect solid waste in areas outside their corporate limits is not subject to competitive bidding. However, solid waste disposal contracts are subject to competitive bidding, unless the price is unaffected, the terms of the contract are not substantially changed, and the existing contract contains a renewal clause. AGO 1993-0310.
- Persons whose sole income is derived from Social Security benefits are exempted from solid waste disposal fees. Food stamps are not income for purposes of determining such exemption. AGO 1993-0314.
- Host governmental approval is required for modification of a permit to increase daily tonnage of waste accepted and/or to expand the area serviced by subject landfill. AGO 1993-0329.
- Section 40-12-180, Code of Alabama 1975, sets forth the maximum fees that municipalities can charge persons engaged in the business of purchasing and receiving or collecting waste grease for rendering or recycling. AGO 1994-0099.

- A resident whose sole income is made up of Social Security benefits and veterans benefits which directly reduce his Social Security entitlement is qualified to receive the garbage fee exemption authorized by Section 22-27-3 of Alabama's Solid Waste and Recyclable Materials Management Act. AGO 1994-0104.
- Contracts between a municipality or county and a solid waste authority are not subject to the competitive bid law. AGO 1994-0183.
- If the county or the state is a market regulator, the county or state cannot restrict disposal of solid waste at landfills to waste which is generated in Alabama. AGO 1994-0186.
- Where an agreement between a county commission and a private solid waste hauler provides that the contractor will receive a certain rate times the number of residences served, the amount is due whether or not a resident pays the amount charged by the county for the collection service. AGO 1994-0196.
- Persons whose sole income is derived from Social Security benefits, Supplemental Security Income, and/or food stamps are exempt from paying solid waste disposal fees under Section 22-27-3(a)(2), Code of Alabama 1975. AGO 1994-0229.
- The county health officer and the county board of health have both the duty and the responsibility to clean up unauthorized dumps on private land, provided the county is reimbursed for the cost. This can be accomplished with agreement from the owner to reimburse and to allow entry onto the land for this purpose. AGO 1994-0240.
- In *Beavers v. County of Walker*, 645 So.2d 1365 (1994), the Alabama Supreme Court held that an agreement entered into between the county commission, a solid waste authority, and BFI granted an exclusive franchise, and was not competitively bid, and, therefore, was void.
- The Eleventh Circuit Court of Appeals has upheld a federal district court ruling that several municipal flow control ordinances in Alabama violated the Interstate Commerce Clause of the U.S. Constitution. *Waste Recycling, Inc. v. Southeast Alabama Solid Waste Disposal Authority*, 814 F.Supp. 1566 (M.D. Ala. 1994). A municipal flow control ordinance was found to violate the Interstate Commerce Clause in *C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383 (1994). However, see, *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste*, 127 S.Ct. 1786 (U.S. 2007).
- In *Parr v. Goodyear Tire and Rubber Co.*, 641 So.2d 769 (1994), the Alabama Supreme Court held that summary judgment against a solid waste authority was improper in a case against a manufacturer for dumping hazardous materials in the landfill.
- A solid waste disposal authority can be formed to collect solid waste. AGO 1995-0008.
- A county commission may not impose a solid waste disposal fee on residents of a municipality without the express consent of the municipality. AGO 1995-0027.
- In *Jasper City Council v. Woods*, 647 So.2d 723 (1994), the Alabama Supreme Court held that a resolution prohibiting the city department from disposing of solid waste – other than inert materials – at the city landfill until the end of the fiscal year was not permanent and not subject to the mayor's veto.
- The responsibility for claiming an exemption to payment of solid waste fees rests on the person seeking the exemption. Although a governmental entity has no duty to seek out persons who are entitled to the exemption, sufficient notice of the exemption should be given to the public. AGO 1995-0080.
- A county may provide for the terms of paying collection fees in the franchise. Nothing prohibits collection of fees three months in advance. AGO 1995-0157.
- A county may use general fund revenue to subsidize the solid waste department. AGO 1995-0197. Note: Solid waste fees cannot be used to subsidize the general fund. *Eclectic v. Mays*, 547 So.2d 96 (Ala. 1989).
- A resident whose sole income is derived from Social Security benefits and veterans benefits which directly reduce his or her Social Security entitlement qualifies for the garbage fee exemption in Section 22-27-3(a)(2), Code of Alabama 1975. AGO 1995-0232.
- In *USA Recycling, Inc. v. Babylon, N.Y.*, 66 F.3d 1272 (2d Cir. 1995), the Second Circuit Court of Appeals held that a town which assumes exclusive control over collection and disposal of solid waste within the municipality, and then contracts out that service to a private hauler does not violate the Interstate Commerce Clause.
- Under Alabama law, individuals may obtain exemptions from participation in mandatory garbage pickup plans pursuant to Section 22-27-3(g), Code of Alabama 1975. AGO 1995-0329.

- In *Carter v. Haleyville*, 669 So.2d 812 (1995), the Alabama Supreme Court found nothing improper about the city opting out of the county's Ten-Year Solid Waste Management Plan.
- A county may contract with a private landowner for the county road department to dump debris onto the property in exchange for the use of the county's personnel and equipment to cover the debris. AGO 1996-0083.
- A municipality may renew an existing solid waste disposal contract without taking bids if the material terms of the contract are not changed. AGO 1996-0142.
- A municipality may not impose protective covenants requiring owners of patio homes, garden homes and town homes to pay extra for the collection and disposal of their garbage while the municipality provides these services to other residents without extra charge. Nor can the municipality provide certain residents with an inferior method of disposal. AGO 1997-0122.
- The exemption from payment of solid waste disposal fees for anyone whose sole source of income is Social Security benefits applies to every county or municipality that provides solid waste disposal services. AGO 1998-0075.
- A municipality charging fees for solid waste collection services, whether through a private corporation or otherwise, must grant an exemption for any household whose sole source of income is Social Security benefits. AGO 1998-0099.
- In a First Circuit Court case, the court upheld a flow control ordinance because the sole contractor hired to haul and dispose of waste was hired following a competitive bidding procedure. *Houlton Citizen's Coalition v. Houlton, Maine*, 175 F.3d 178 (1st Cir. 1999).
- In *TransAmerican Waste Industries, Inc. v. Benson*, 690 So.2d 346 (1997), the Alabama Supreme Court used a balancing test, balancing the urgent need for action on a landfill against the need to set aside a county commission's actions based on perceived deficiencies in the public notice to find that notice was sufficient to apprise the pubic of the subject of the hearing.
- In *Peake Excavating, Inc. v. Town Board of Hancock*, 93 F.3d 68 (1996), a Second Circuit Court held that a municipal ordinance that prohibits the operation of a dump or the dumping of waste materials in the municipality, except at a municipally operated landfill or transfer station does not violate the Commerce Clause.
- In *U.S. v. Denver*, 100 F.3d 1509 (1996), a Tenth Circuit Court found that a municipal ordinance that prohibits the maintenance of hazardous waste in areas zoned for industrial use conflicts with the goals of CERCLA and is preempted.
- The Attorney General's office has held that the proceeds from tipping fees at a solid waste landfill may be deposited into the county general fund, but the money must be earmarked for expenses related to the operation of the landfill. AGO 1998-0005.
- In *Concerned Citizens v. Fairfield*, 718 So.2d 1140 (1998), the Alabama Court of Civil Appeals upheld Fairfield's solid waste collection fee.
- An individual who received a lump sum retirement benefit in 1992 but whose sole source of income at the present time is Social Security, may currently receive the exemption from the payment of garbage fees under Section 22-27-3(a)(3), Code of Alabama 1975. AGO 2002-0225.
- Any household whose sole source of income is Social Security benefits is exempt from solid waste collection and disposal fees, regardless of whether the service provided is mandatory. AGO 2002-0173.
- Although a municipality has the authority to maintain health and cleanliness within its police jurisdiction, the authority to regulate solid waste extends only to the corporate limits and does not extend into the municipal police jurisdiction. *Disposal Solutions Landfill v. Lowndesboro*, 837 So.2d 292 (Ala. Civ. App. 2002).
- A city ordinance requiring generators of solid waste to subscribe to a city program for the collection of such waste absent an exemption was insufficient to justify entry of a preliminary injunction against a waste disposal company that did not itself generate solid waste, in the city's action seeking to require the company to discontinue its operations in the city. The ordinance, in and of itself, did not establish that the city would suffer immediate and irreparable harm from the company's continued operations, that the city was likely to succeed on the merits, of that the hardship imposed upon the company would not unreasonably outweigh any benefits to the city. *Blount Recycling v. Cullman*, 884 So.2d 850 (Ala. 2003).
- Section 11-89A-5 of the Code of Alabama allows a county solid waste disposal authority to amend its certificate of incorporation to become a municipal solid waste disposal authority that would qualify for the exemption from the Competitive Bid Law found in Section 11-89A-18. AGO 2007-0059.

- Contracts between public entities are not required to be competitively bid. Solid waste disposal contracts between the county and municipalities are not required to be let by competitive bidding. AGO 2008-0093.
- A city's contention that the director of the Department of Environmental Management acted beyond his authority in issuing a landfill permit without first obtaining a consistency report or adequate hydrological evaluation involved an action seeking review of the sufficiency of the evidence on which the director rested his official action in issuing the permit, rather than an action seeking interpretation of a statute, and, thus, did not fall within any exception to the exhaustion-of-administrative-remedies doctrine. There are recognized exceptions to the exhaustion of administrative remedies doctrine, including when (1) the question raised is one of interpretation of a statute, (2) the action raises only questions of law and not matters requiring administrative discretion or an administrative finding of fact, (3) the exhaustion of administrative remedies would be futile and/or the available remedy is inadequate, or (4) where there is the threat of irreparable injury. *City of Graysville v. Glenn*, 46 So.3d 925 (Ala.2010)
- A city may place a duty on garbage customers to provide the garbage department with updated contact information if the customers are not receiving garbage bills in the mail. The city is authorized to adopt a payment plan to bring delinquent accounts up to date. Section 22-27-5 of the Code provides the city with the option to discontinue service for failure to pay service fees. Section 22-27-5(e) of the Code also authorizes a city to pursue civil penalties, and section 22-27-7 authorizes a municipality to pursue criminal penalties for failure to pay service fees. The city may publish the names and account balances of delinquent garbage customers. AGO 2010-0106
- The county commission may deposit proceeds from the sale of carbon credits generated from the destruction of methane at the landfill into the general fund. AGO 2015-0020.
- Any modification of a renewable contract for residential solid waste collection, transfer, and disposal that includes an increase in the amount charged for services, beyond that contemplated by the original contract, requires competitive bidding. AGO 2015-0032.
- A municipality may enter into an agreement with a county for the collection and disposal of solid waste, and receive a percentage of the revenue generated, even if the municipality does not participate in the collection or disposal. The funds received must be used for solid waste disposal. AGO 2016-0051.
- Operation of landfill by corporation formed by outside county did not violate statute stating that governing bodies may enter into agreements or contracts with each other for disposal of solid waste, even though county did not obtain city's permission before corporation acquired and began operating landfill; use of word "may" indicated a discretionary or permissive act. *City of Brundidge v. Dept. of Envtl. Mgmt.*, 218 So.3d 798 (Ala.Civ.App.2016).
- Language contained within a renewal clause of a contract for solid waste collection which includes an upward adjustment to the monthly collection fee does not constitute a material change to the contract in violation of the Competitive Bid Law so long as the formula used for calculating an adjustment to the monthly collection fee upon renewal was contemplated under the original contract. AGO 2022-0006.
- A town that provides or makes available solid waste collection or disposal services may adopt a resolution or ordinance setting forth rules and regulations requiring the identification of all members of a household to ensure mandatory participation in and subscription to the services. A town has some discretion in establishing fees for its solid waste collection and disposal services. AGO 2022-0010
- The Lee County Commission may provide for solid waste disposal and charge a fee pursuant to section 22-27-3 and 22-27-5 of the Code. The County may require mandatory participation unless the resident or household meets one of the exceptions set forth in section 22-27-3 of the Code. The County may also charge the fee directly to the residents and is free to select the billing period. The County is not required to collect the fee annually or at the same time that property taxes are collected. Local Act 81-737 is no longer applicable with respect to garbage fee collection. AGO 2022-0038.
- A.G. No. 92-00291 is modified to the extent it is in conflict with A.G. No. 84-00315 regarding garbage fees. Alabama's common-law doctrine prohibiting execution on property used for public purposes applies to public corporations, including public corporations organized under the Alabama Solid Waste Disposal Authorities Act. *WM Mobile Bay Environmental Center, Inc. v. City of Mobile Solid Waste Authority*, (Ala. 2021).