

## Opinion No. 71-24

February 16, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Honorable Aubrey L. Dunn State Senator New Mexico State Senate Legislative-Executive Building Santa Fe, New Mexico 87501

### QUESTIONS

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1. May a county which wishes to establish a system of refuse collection and disposal do so under the authority of Section 15-57-1, et seq., N.M.S.A., 1953 Comp., without following the procedures required in Section 15-52-1, et seq., N.M.S.A., 1953 Comp.?
2. Can Section 15-57-1, et seq, **supra**, be amended to lawfully provide the power for the county to collect fees from residents for refuse collected?
3. May the county collect fees at the disposal site under Section 15-57-1, et seq, **supra**, without amendment thereto?

#### CONCLUSIONS

1. Yes.
2. Yes.
3. See analysis.

### OPINION

#### {\*39} ANALYSIS

1. The Refuse Disposal Act (§ 15-52-1, et seq., N.M.S.A., 1953 Comp.) was passed in 1959 (N.M.S.L. 1959, ch. 194), and set up the procedure by which counties could create and operate refusal disposal systems.

Sections 15-57-1 through 15-57-3, N.M.S.A., 1953 Comp., which also give counties the authority to create and administer a refuse collection and disposal system, was passed in 1967 (N.M.S.L. 1967, ch. 79).

These two statutory enactments are both concerned with county refuse disposal systems, but each involves somewhat different authority and methods. The Refuse Disposal Act (1959) requires a petition leading to a referendum before a refuse disposal

district can be created. After the district has been duly created, the county commissioners have the power to set and collect service charges (§ 15-52-11 (F), N.M.S.A., 1953 Comp.).

The 1967 enactment allows a county to "establish and maintain, manage and supervise a system of storage, collection and disposal of all refuse." § 15-57-2, N.M.S.A., 1953 Comp. The act gives the commissioners the power to plan, construct, operate and administer such a system and to expend monies for such purposes. The act does not, however, grant power to set and collect service charges.

The 1967 act allows the refuse collection and disposal system to be created by the commissioners without going through the procedure of petition and referendum required by the 1959 act. Which enactment controls?

In I Sutherland, **Statutory Construction** § 2012 (3rd ed. 1943), it is stated:

"When a subsequent enactment covering a field of operation coterminus with a prior statute cannot be any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict."

We see a conflict to this extent: The earlier act requires that certain procedures be followed if a county refuse disposal district is to be created. The later act allows the county to provide for refuse disposal without creating a special district and without the necessity for petition and referendum. By virtue of the above-stated axiom of statutory construction, the later act controls and the county may provide for refuse collection and disposal under Section 15-57-1, et seq., **supra**, without meeting the requirements of Section 15-52-1, et seq., **supra**.

{\*40} A reconciliation of the two acts would also allow Section 15-57-1, et seq., **supra**, to be used without reference to Section 15-52-1, et seq., **supra**. It is possible to view the later as giving legislative authority for the creation of refuse disposal districts, but as not restricting counties, if given authority by other legislation, in adopting other refuse disposal methods. With the passage of Section 15-57-1, et seq., **supra**, the counties were given such other authority. Since one act deals only with refuse disposal districts, and the other with a method not involving a district, then neither act places any restrictions on actions under the other, which is the case here.

Therefore, it is the opinion of this office that counties may provide for refuse collection and disposal under Section 15-57-1, et seq., **supra**, without regard for Section 15-52-1, et seq., **supra**.

2. The powers of New Mexico counties are enumerated in Section 15-36-1, N.M.S.A., 1953 Comp., which reads in pertinent part:

"Each organized county in this state shall be a body corporate and politic, and as such shall be empowered for the following purposes:

. . . .

FIFTH. To exercise such other additional powers as may be specifically conferred by law."

The power for counties to set and collect service charges for refuse disposal is a legitimate subject of legislation, as is demonstrated by the inclusion of such a grant of power in Section 15-52-1, et seq., **supra**. It being proper to grant it in that case, it is also proper for the legislature to grant it to counties acting under the authority contained in Section 15-57-1, et seq., **supra**.

3. The answer to the question of whether a county might be able to collect fees at the site of a refuse disposal project is not absolutely clear. Certainly there is nothing in Section 15-57-1, et seq., **supra**, which expressly grants such authority. Furthermore, we do not feel that the power provided in Section 15-52-11(F), **supra**, which allows refuse districts to set and collect service charges, could provide authority for collection of such fees when the refuse were not disposed of by a refuse district.

If we turn again to the statute granting general powers to counties (§ 15-36-1, **supra**), we may arguably find a grant of power. There it is provided that counties have the power:

"To . . . do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers."

It can be argued that, since the legislature has seen fit to allow counties to collect and dispose of refuse, that collection of service charges therefor is necessary to the exercise of the county's power.

At least one factor militates against such a position. Obviously counties have limited powers granted to them by statute. If it was necessary to grant power to collect fees under the Refuse Disposal Act, the same would be necessary under Section 15-57-1, et seq., **supra**.

We feel that an affirmative answer to this question is at least of questionable validity and would urge that a statute be enacted specifically granting such power. Then there would be no need for this questionable interpretation.

By: C. Emery Cuddy, Jr.

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