

FORMAL OPINION

local entities to participate in privately operated plans or to permit named fiduciaries of the local units to make agreements with non-profit entities for the investment of deferred compensation funds. Rather, the statutory scheme provides that local entities are to invest any deferred compensation funds, not immediately required for use, only in those types of investments which the Legislature has expressly described in the act.

In conclusion, you are advised that counties and municipalities are not authorized to participate in commercially managed deferred compensation plans or to enter into agreements with non-profit corporations to provide for the investment of deferred compensation funds. You are further advised, however, that such local units may participate in any deferred payment compensation plan established by the State for the State's employees and, through such a plan, in any deferred compensation plans administered and managed by private organizations with whom the New Jersey State Employees Deferred Compensation Board may contract.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: SUSAN L. REISNER
Deputy Attorney General

January 25, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1980

Dear Commissioner English:

The Solid Waste Administration has requested an opinion interpreting the Solid Waste Management Act and the Solid Waste Utility Control Act of 1970, to determine whether solid waste management districts, acting pursuant to solid waste management planning, have the authority to require that solid waste generated within the districts be directed to specific waste disposal facilities. Please be advised that the planning districts have authority to formulate a solid waste management plan showing the destination of wastes generated within the districts, and that the New Jersey Department of Environmental Protection has final authority to approve and render operative such a plan. Similarly, the Board of Public Utilities Commissioners may designate a solid waste management district as a franchise area to be served by one or more persons engaged in solid waste disposal, and in this manner the B.P.U. may exercise control over the destination of the waste stream.

At the outset, it is important to recognize that environmentally sound

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solid waste disposal, as well as the efficient and economical provision of solid waste collection and disposal services, are matters which directly affect the public health, safety and welfare. N.J.S.A. 13:1E-2, N.J.S.A. 48:13A-2. *Hackensack Meadowlands v. Mun. Landfill Authority*, 68 N.J. 451 (1975); *Southern Ocean Landfill v. Ocean Tp.*, 64 N.J. 190 (1974). The Legislature has therefore enacted a comprehensive scheme mandating the strict regulation of all solid waste collection and disposal operations. N.J.S.A. 13:1E-1 *et seq.*, N.J.S.A. 48:13A-1 *et seq.* To ensure environmental quality, the Act prohibits any person from engaging "in the collection or disposal of solid waste" without obtaining approval from the DEP. N.J.S.A. 13:1E-5(a). Moreover, in order to assure the economic integrity of the operation, no person may engage "in the business of solid waste collection or solid waste disposal until a certificate of public convenience and necessity" is issued by the B.P.U., N.J.S.A. 48:13A-1, 6 *et seq.* In combination, these statutes provide for a far-reaching regulatory program designed to remedy the "grave problem" to the public health generated by improper solid waste collection and disposal. N.J.S.A. 13:1E-2.

The Act initiates this overall solid waste management scheme by mandating a regional planning approach as a basis for solid waste collection and disposal throughout the State. N.J.S.A. 13:1E-2, 4, 5, 20 *et seq.* This planning required by the Act consists of several distinct stages, and commences with the promulgation by the DEP of "general guidelines sufficient to initiate the solid waste management process by solid waste management districts . . ." N.J.S.A. 13:1E-6(a)(3). These "planning districts" are coincidental with the twenty-one counties and the Hackensack Meadowlands Development Commission. N.J.S.A. 13:1E-19.

The next step in the planning process is actual plan formulation and development by the planning districts. N.J.S.A. 13:1E-20, 21. This entails comprehensive planning studies to obtain regional data, including an inventory and appraisal of all facilities within the district. N.J.S.A. 13:1E-21. The waste disposal needs of the region, as well as a strategy to be applied in meeting same, are also to be developed, N.J.S.A. 13:1E-21, and a site plan depicting the location of "suitable sites to provide solid waste facilities" to meet such regional needs must be prepared. N.J.S.A. 13:1E-21(b)(3). It is also required that during this planning process, the districts analyze the "solid waste collection systems and transportation routes" within the respective districts. N.J.S.A. 13:1E-21(a)(4). The clear objective is thus to commence formulation of a management plan which most effectively and economically controls waste collection and disposal. N.J.S.A. 13:1E-2, 6, 7, 20 *et seq.*

After the district plan is formulated, the plan must then be submitted to the public for comment at a public hearing. N.J.S.A. 13:1E-23(c), N.J.S.A. 13:1E-24(c)(e). Thereafter, the district must "adopt or reject, in whole or in part, the solid waste management plan." N.J.S.A. 13:1E-23(e). Any plan so adopted must include all facilities approved by the DEP during the district's period of initial plan formulation. N.J.S.A. 13:1E-4(b).

Finally, after promulgation of the guidelines and after these prior stages of plan development, public hearings, and adoption of a plan in whole or in part by a district, the planning scheme is concluded by submission of the plan to the Commissioner of the DEP for review and final

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approval. The Commissioner has authority to modify, reject or approve such plans, and to set forth the procedures to be followed by a district upon remand of the plan. N.J.S.A. 13:1E-24. In the final analysis, the Commissioner is authorized to "adopt and promulgate any modification or replacement he deems necessary with respect to the solid waste management plan." N.J.S.A. 13:1E-24(g). This power is to be exercised so as to encourage "maximum practicable use of resource recovery" facilities. N.J.S.A. 13:1E-6(a)(3), 6(b)(1), N.J.S.A. 13:1E-21(b)(2). The districts must then implement the plan ordered and approved by the Commissioner. N.J.S.A. 13:1E-24(f).

It is against the background of this mandatory planning system that the question herein presented must be considered. Review of the Act demonstrates that the actual authority granted to the districts is to plan for solid waste management within the district, and subsequently to implement the respective solid waste management plans. N.J.S.A. 13:1E-20 *et seq.* As an integral part of this planning process, the district is to develop a strategy to most effectively provide waste disposal services to the region. N.J.S.A. 13:1E-21(b)(2). The districts are to consider, among others, such planning elements as transportation routes, economic impacts, suitable sites, and encouragement and implementation of resource recovery. N.J.S.A. 13:1E-21. The apparent intent of such comprehensive planning is to coordinate solid waste management on a regional and State-wide basis. N.J.S.A. 13:1E-2. The management plan developed by the district may therefore provide for the channelization of wastes to specific facilities if such planning is reasonably deemed to best effectuate the regional strategy so formulated. District planning may thus provide an effective blueprint setting forth the disposal sites for wastes generated within the region. See, N.J.S.A. 13:1E-20, 21 and N.J.S.A. 13:1E-2(c), where the Act refers to "particular facilit[ies] . . . [which have been] designated [in the plan] as the place of disposal . . .".

Since the DEP is required, after approval of the plan, to register only those facilities (including collection and disposal operations) which conform to the district plan, any new registration may be conditioned upon receipt of wastes as directed in the district plan. N.J.S.A. 13:1E-4, 5, 26. Moreover, the registrations of existing facilities, in appropriate instances, may be amended by the DEP to reflect the provisions of the district plan, N.J.S.A. 13:1E-5(c), thereby bringing present facilities into compliance with the legislative objective and planned concept to direct waste in such a manner as to effect environmentally sound and economically efficient solid waste management. As a result of district planning, a waste management strategy directing the solid waste stream to specific facilities may be developed by the districts. After approval of such a district plan by the DEP, the strategy may be implemented by the respective districts, N.J.S.A. 13:1E-4, 20 *et seq.*

Similarly, the B.P.U. is integrally involved in this management process. Not only can the B.P.U. designate a district as a "franchise area to be served by one or more persons engaged in solid waste collection . . . [and] disposal," but also by regulating the rate structures of solid waste facilities, the B.P.U. can encourage a marketplace where the new and established operators may be motivated towards conformity with the dis-

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trict plan. N.J.S.A. 48:13A-5, N.J.S.A. 48:13A-4, 7; N.J.S.A. 13:1E-2, 22, N.J.S.A. 48:2-25. In this manner, the strategy directing wastes to specific disposal/processing facilities can be further effectuated.*

It is therefore our opinion that the Solid Waste Management Act and the Solid Waste Utility Control Act establish the authority of the solid waste districts through their comprehensive planning to direct the flow of wastes to selected destinations. The exercise of administrative authority by the DEP can effectuate compliance with the district plans, and the B.P.U. can either directly franchise an area, or otherwise influence the marketplace through rate-setting in such a manner as to affect the flow of waste materials throughout the districts. N.J.S.A. 13:1E-1 *et seq.*, N.J.S.A. 48:13A-1 *et seq.* N.J.S.A. 48:2-1 *et seq.* Therefore, through the combined abilities of the districts, the DEP and the B.P.U., solid waste generated within a district may be directed to specific waste disposal facilities.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: NATHAN M. EDELSTEIN
Deputy Attorney General

* The overall management scheme set forth in the Act and the Utility Act involving regulation of both the environmental and economic aspects of solid waste collection, utilization and disposal may necessitate control over the flow of wastes from point of generation to final disposal. *See, Public Hearing Before New Jersey Legislature Senate Committee(s) on Energy, Agriculture and Environment and County and Municipal Government on Senate Bill No. 624 (Solid Waste Management)(1974) (Statement of Senator Matthew Feldman);* N.J.S.A. 13:1E-2, N.J.S.A. 48:13A-2. If, for example, the complex technology associated with resource recovery is to be phased in throughout the State, as required in the Act, N.J.S.A. 13:1E-2, 6, 21, then the waste stream must be directed in such a manner as to encourage the development of these facilities. *Cf. In re Combustion Equipment Associates, Inc.*, 169 N.J. Super. 305 (App. Div. 1979). The means selected by the Legislature to accomplish such a comprehensive waste management program is regional planning, from which will be determined "the most efficient, sanitary and economical ways of collection, disposing, limiting, and utilizing solid waste . . ." N.J.S.A. 13:1E-2(b)(6), *see also*, N.J.S.A. 48:13A-2, 5. These regional plans then form the basis against which any application for a solid waste collection or disposal registration must be evaluated by the DEP, N.J.S.A. 13:1E-4, 26, and upon which the B.P.U. is to exercise its licensing authority, N.J.S.A. 48:13A-5, 6.
