

FORMAL OPINION

discharge of prisoners, . . . shall apply to persons under sentence for offenses committed prior to the effective date of the code

The new criminal Code does not provide for the award of work or commutation credits. The authority to grant these credits is provided by N.J.S.A. 30:4-140 and N.J.S.A. 30:4-92 which have not been amended by the enactment of the criminal code. There, consequently, is no provision of the new criminal code governing the treatment, release or discharge of prisoners to be applied to sex offenders sentenced for offenses committed prior to the effective date of the Code.

June 9, 1980

JERRY FITZGERALD ENGLISH, *Commissioner*
Department of Environmental Protection
P.O. Box 1390
Trenton, New Jersey 08625

FORMAL OPINION NO. 12—1980

Dear Commissioner English:

You have requested an opinion interpreting the Solid Waste Management Act and the Solid Waste Utilities Control Act, to determine whether authorization exists for the establishment of "uniform average rates for solid waste disposal utilities within a Solid Waste Management District."

It is important to recognize from the outset that environmentally sound 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. *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 regulations 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 Solid Waste Management Act (1970), N.J.S.A. 13:1E-1 *et seq.*, (hereinafter the "Act") prohibits any person from engaging "in the collection or disposal of solid waste" without obtaining approval from the Department of Environmental Protection (hereinafter "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.* (Solid Waste Utility Control Act of 1970) (hereinafter the "Utility Act"). 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.*

ATTORNEY GENERAL

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-20.

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, 20 *et seq.*

In conjunction with the DEP, the Board of Public Utilities Commissioners is integrally involved in this management process. Under §24 of the Act, N.J.S.A. 13:1E-24, and after receipt by the Commissioner of a solid waste management plan adopted in its entirety, the DEP is required to submit a copy of the plan to the Board of Public Utilities Commissioners for review and recommendations on the "economic aspect of the plan." Similarly, under the Utility Act the B.P.U. is authorized to designate a district as a "franchise area to be served by one or more persons engaged in solid waste collection . . . and disposal." N.J.S.A. 48:13A-4, 5, 7. The B.P.U. is also vested with the fundamental authority to establish the rate structures of solid waste facilities. N.J.S.A. 48:13A-1 *et seq.*, N.J.S.A. 48:2-25.

Through the joint abilities of the B.P.U., the districts, and the DEP, an overall solid waste management program to provide for the efficient and economical collection and disposal of solid wastes throughout the State can thus be effected. Equalized rates to be paid by consumers for solid waste collection and disposal services may be included within this management plan.

In this regard, only the B.P.U. is generally authorized to determine rates for individual solid waste utilities, N.J.S.A. 48:13A-1 *et seq.*, N.J.S.A. 48:2-1 *et seq.*, N.J.S.A. 13:1E-2(b)(5), N.J.S.A. 13:1E-27. In setting such rates, the B.P.U. is to consider the legislative intent to encourage efficient and economic waste disposal N.J.S.A. 13:1E-1 *et seq.*, and the B.P.U. may also exercise its rate-making authority in a manner to best insure environmental quality, N.J.S.A. 13:1E-2(b)(5). Moreover, since solid waste utilities, due to their competitiveness, may be differentiated from other public utilities, which are generally monopolistic, the B.P.U. may account for such differences in determining rates for solid waste utilities N.J.S.A. 48:2-25, *In Re Application of Saddle River*, 71 N.J. 14 (1976). The B.P.U. therefore has substantial flexibility in making rates for solid waste facilities

FORMAL OPINION

so as to best effectuate objectives of the Act and the Utility Act, N.J.S.A. 48:13A-1, 7, N.J.S.A. 13:1E-2.*

Equally as important, however, uniform costs to consumers may be effected through district planning even though independent rates are set for each solid waste facility. The broad planning authority vested in the districts includes the ability to develop an economic strategy to direct the flow and manner of solid waste collection, utilization and disposal. N.J.S.A. 13:1E-1 *et seq.* As part of this economic planning, methodologies can be devised to pass on to consumers a uniform cost of service even though each facility operates pursuant to an independent rate schedule. As an example, a "weighted average" may be an acceptable element within a district planning strategy. If proposed by a district, and approved by the DEP, this "weighted average" approach would calculate an equalized charge to be paid by consumers, with all such revenues distributed by an implementing agency to facilities within a district based upon a formula encompassing such variables as wastes received over a specific period of time and the independent rate base of each facility. Similarly, the B.P.U. through its franchising powers may equalize or control costs within a region by directing wastes to specific facilities, each with an approved rate base, N.J.S.A. 48:13A-5, and too, uniform rates may also be set if the solid waste facilities are public authorities pursuant to N.J.S.A. 13:1E-22.

Also, it is important to note as we have spelled out in great detail in *Formal Opinion No. 3—1980*, a solid waste management plan developed by a district may provide for the direction or control of the flow of wastes to a specific facility in order to encourage environmentally and economically sound solid waste planning. This may serve as a practical alternative to encourage equalized rates for consumers. This is illustrated by efforts to offset the prohibitive costs of the Hackensack Meadowlands Development Commission baler through the management of the flow of wastes directed to that facility. Although the particulars of any given economic approach within a district-wide solid waste management strategy must be left to the district plans, the authority to plan in such fashion may be found in the Act. *See* N.J.S.A. 13:1E-2(b)(5), 2(b)6, 21(b)(2), and N.J.S.A. 48:13A-1 *et seq.*

In sum, the Solid Waste Management Act and the Solid Waste Utilities Control Act are broadly fashioned preventative and remedial statutes designed to bring about environmentally sound and economically efficient solid waste management. In conjunction, the Acts provide for the development of district plans which may propose equalized rates to be paid by

* An exception to the exclusive rate-making authority of the B.P.U. appears to exist at N.J.S.A. 13:1E-22, where the Legislature has empowered boards of chosen freeholders and the Hackensack Meadowlands Development Commission to provide for *rates and charges* "necessary in development and formulation of a solid waste management plan . . ." Such authority is limited to those instances when the respective board(s) of chosen freeholders of the Hackensack Commission has entered into a contract or agreement with a public authority for the furnishing of solid waste collection and disposal services. Moreover, the B.P.U. retains jurisdiction to order an adjustment in such a contract in order to assure that the rates and charges are "just and reasonable". N.J.S.A. 48:13A-7, *In Re Application of Saddle River*, 71 N.J. 14, 25 (1976).

ATTORNEY GENERAL

consumers. Upon submission of the plan(s) to the DEP, and after consultation with the B.P.U., the DEP may approve, modify or reject same. The B.P.U. may then set individual rates, or designate a franchise so as to reflect the provisions and economic strategy of the district plans. It is therefore our opinion that solid waste management districts are authorized by these acts in the development of solid waste management plans to direct the waste stream to preferred facilities and, in conjunction with the DEP and B.P.U., to require the establishment of uniform average solid waste disposal rates.

Very truly yours,
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Attorney General

By: NATHAN M. EDELSTEIN
Deputy Attorney General

June 13, 1980

New Jersey Board of Optometrists
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Newark, New Jersey 07102

FORMAL OPINION NO. 13—1980

Dear Members of the Board:

You have asked for our advice as to whether the Board of Optometrists may require its prior approval of vision service plans. For the following reasons, it is our opinion that the Board has the authority to establish a requirement for its prior approval of those elements of vision service plans which concern the rendering of optometric care services to members of the plan. You are further advised, however, that it would be beyond the authority of the Board to either restrict its right of prior approval to solely nonprofit vision service plans or to require a vision service plan to operate on an "open panel" basis.

At the outset, it is necessary to refer to the definition of a vision service plan under the Board's regulation, N.J.A.C. 13:38-2.7, which provides in pertinent part:

a plan offered by a non-profit association or corporation whose objective shall be to foster the conservation of human eyesight whereby [licensed optometrists] can offer their professional services upon a planned payment basis to members of groups desiring said services

It may be assumed that to the extent a vision service plan is operated on a profit making basis it would not qualify to receive the Board's approval to operate. The initial inquiry, therefore, is focused directly on whether the Board may, consistent with its enabling authority, limit vision service