

FORMAL OPINION

June 19, 1980

JOSEPH A. LaFANTE, *Commissioner*
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 14—1980

Dear Commissioner LaFante:

An opinion has been requested whether the construction of resource recovery facilities by counties or county authorities pursuant to the Solid Waste Management Act of 1970 is subject to the requirements of the Local Public Contracts Law. For the following reasons, it is our opinion that such construction of resource recovery facilities by counties or county authorities is subject to the terms and provisions of the Local Public Contracts Law.

The Solid Waste Management Act (hereinafter the "Act") sets forth a comprehensive regulatory scheme intended to assure environmentally sound solid waste collection and disposal throughout New Jersey. N.J.S.A. 13:1E-2. The Act not only vests the Department of Environmental Protection with broad administrative authority to register such solid waste operations within the State, but it establishes an extensive solid waste management planning scheme to provide for the efficient, economical and environmentally sound collection and disposal of solid waste. N.J.S.A. 13:1E-2, 6, 20 *et seq.* The Act expressly declares as its policy the encouragement of "resource recovery through the development of systems to collect, separate, recycle and recover metals, glass, paper and other materials of value for reuse or for energy production." N.J.S.A. 13:1E-2(b)(7). *See* N.J.S.A. 13:1E-6(b)(1), 21(b)(2).

To implement this planning program throughout the State, the Act identifies twenty-two planning districts which include each county and the Hackensack Meadowlands District. N.J.S.A. 13:1E-19. Each district is required to develop a comprehensive area-wide solid waste management plan, which is subject to final review and approval by the Department of Environmental Protection. N.J.S.A. 13:1E-20 *et seq.* Each district is authorized in the development and formulation of its district plan "to enter into any contract or agreement with any public authority within any solid waste management district providing for or relating to solid waste collection and solid waste disposal. . . ." N.J.S.A. 13:1E-22. The Act further provides that every action taken by any county pursuant to its terms is a "county purpose" and that in "the performance of any responsibilities or requirements pursuant to [the Act], any county may adopt and come under the 'County Solid Waste Disposal Financing Law.'" N.J.S.A. 13:1E-25(a)(b).

Under the County Solid Waste Disposal Financing Law, N.J.S.A. 40:66A-31.1 *et seq.*, any county or county authority is authorized to "purchase, construct, improve, extend, enlarge or reconstruct solid waste disposal facilities within such county . . ." and may "make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act . . ." N.J.S.A. 40:66A-31.4(1), (6). In combination, the Solid Waste Management Act and

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the County Solid Waste Disposal Finance Law thus appear to vest the counties with authority to contract for the collection and/or disposal of solid waste as part of their solid waste management planning responsibilities.

The question presently raised is whether such a contract is subject to the terms and provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* The Legislature has directly addressed this issue in the County Solid Waste Disposal Finance Law where it is provided that any contract entered into by a county pursuant to that act is "subject to P.L. 1971, c. 198 'Local Public Contracts Law' (c. 40A:11-1 *et seq.*).". Similarly, the Solid Waste Management Act requires that any contract between a county and a public authority regarding solid waste collection and disposal must "conform to all the requirements of law for contracts or agreements made by any public authority" N.J.S.A. 13:1E-22.

Furthermore, the construction of resource recovery facilities under the Local Public Contracts Law is consistent with a legislative policy to guard against favoritism, improvidence, extravagance and corruption. *L. Pucillo & Sons, Inc. v. Mayor & Council of Bor. of New Milford*, 73 N.J. 349 (1977). These objectives are complementary to the legislative concern to effectuate the most efficient and economical solutions to the statewide crisis in solid waste management, as expressed in both the Solid Waste Management Act and the Solid Waste Utility Control Act of 1970, N.J.S.A. 48:13A-1 *et seq.* The Supreme Court has noticed, in fact, that the solid waste industry has historically "tended to inefficiency in the form of wasteful fragmentation and conflicting licensing requirements, [and] was fraught with the potential for abuse in the form of favoritism, rigged bids, official corruption, and the infiltration of organized crime." *In re Application of Saddle River*, 71 N.J. 14, 22 (1976). The court thus proceeded to determine that when read together, these statutes intend to keep solid waste collection and disposal utilities within the ambit of the Local Public Contracts Law: "[I]n view of the strong public policy favoring competitive bidding and the whole tenor of the Solid Waste Utility Control Act, we think it evident that the Legislature intended that municipalities enter into solid waste contracts only after advertising for competitive bids We hold, therefore, that contracts negotiated with solid waste disposal and collection utilities do not at present fall under the exception of N.J.S.A. 40A:11-5(1)(f)" *In re Application of Saddle River*, 71 N.J. 14, 24, 32 (1976). It therefore appears clear that in addition to an express legislative requirement for the construction of resource recovery facilities by counties pursuant to the Local Public Contracts Law, a system of competitive bidding is in furtherance of public policy generally in the area of solid waste management.

You are accordingly advised that the construction of resource recovery facilities by counties under their statutory authority regarding solid waste collection and disposal is subject to the terms and provisions of the competitive bidding requirements of the Local Public Contracts Law.

Very truly yours,
JOHN J. DEGNAN
Attorney General

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