

VOLUME NO. 43

OPINION NO. 68

COUNTIES - Whether a refuse disposal district is a "political subdivision";
COUNTY GOVERNMENT - Whether a refuse disposal district is a "political subdivision";
INVESTMENTS, BOARD OF - Whether a refuse disposal district is a "political subdivision";
LOCAL GOVERNMENT - Whether a refuse disposal district is a "political subdivision";
SOLID WASTE - Whether a refuse disposal district is a "political subdivision";
MONTANA CODE ANNOTATED - Sections 7-12-1131, 7-12-2123, 7-13-202, 7-13-204 to 7-13-210, 7-13-213, 7-13-215, 7-13-231, 7-13-232 to 7-13-234, 7-13-2218, 7-13-2221, 7-14-219, 7-33-2105, 7-34-2122, 15-1-101(2), 17-5-1601 to 17-5-1651, 17-5-1604(3), 75-10-101 to 75-10-125, 75-10-103, 75-10-112, 76-15-403, 85-7-1902;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 56 (1990), 42 Op. Att'y Gen. No. 80 (1988), 38 Op. Att'y Gen. No. 87 (1980), 37 Op. Att'y Gen. No. 22 (1977), 35 Op. Att'y Gen. No. 71 (1974).

HELD: A refuse disposal district is not a "political subdivision" as that term is used in section 17-5-1604(3), MCA.

July 31, 1990

David M. Lewis, Executive Director
Board of Investments
Department of Commerce
Capitol Station
Helena MT 59620

Dear Mr. Lewis:

You have requested my opinion on the following question:

Is a refuse disposal district a "political subdivision" as that term is used in section 17-5-1604(3), MCA?

Your question involves interpretation of the Municipal Finance Consolidation Act (MFCFA), §§ 17-5-1601 to 1651, MCA. One of the policies underlying the MFCFA is to

foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law[.]

§ 17-5-1602(1)(a), MCA. The MFCFA is also designed to give local government units the ability to borrow money at lower interest rates. § 17-5-1602(1)(b), MCA. The Board of Investments (the Board) tries to accomplish these goals by pooling debt instruments from local government units and by providing additional security for the payment of the instruments. § 17-5-1602(2)(b), MCA.

Section 17-5-1604(3), MCA, defines local government unit for purposes of the MFCFA:

"Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district.

Your question is whether a refuse disposal district is a "political subdivision" as that term is used in this section.

A refuse disposal district is an area with definite boundaries established for the purpose of collecting and disposing of all refuse in the district.

§ 7-13-202(5), MCA. A refuse disposal district is created by resolution of the county commissioners after notice and opportunity for hearing on protest. §§ 7-13-204 to 210, MCA. Once a district is created, the commissioners appoint a board of directors. § 7-13-213, MCA. Section 7-13-215, MCA, describes the powers and duties of the board of the refuse disposal district and provides in pertinent part:

The board of a refuse disposal district established and organized under this part has the following powers and duties, with the approval of the county commissioners of the counties involved:

....

(8) to borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the money received from the fees levied under this part.

The refuse board may also establish a service fee, with the approval of the county commissioners, provided a public hearing is held if a written protest has been made. § 7-13-231, MCA. An increase in fees may not be approved and implemented without notice and opportunity for hearing. *Id.* The amount of the fee is based upon a family residential unit with fees for commercial and business accounts based on a comparison with the family unit as to the volume and type of waste produced. § 7-13-232, MCA. The amount of the fee is placed on tax notices and collected with the property tax. Failure to pay the fee results in a lien upon the property. § 7-13-233, MCA. Only the county commissioners may issue warrants upon claims approved by the refuse board. § 7-13-234, MCA.

Initially, it must be noted that a refuse district may not be considered a "special taxing district" as that term is used in section 17-5-1604(3), MCA. As generally defined, the term "taxing unit" is

deemed to include a county, city, incorporated town, township, school district ... or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

§ 15-1-101(2), MCA. In 42 Op. Att'y Gen. No. 80 (1988), a rural fire district operated by the county was not considered a "taxing unit." That opinion stated:

Where the county commissioners and not the fire district itself establish the tax levy for the district, the definition of "taxing unit" does not encompass the fire district. A "taxing unit" entails an entity that establishes its own tax levy. In this situation, the board of county commissioners and not the fire district has this role. Thus, a fire district operated by the county and not by a

board of trustees is not a "taxing unit." A rural fire district operated by a board of trustees, however, is a "taxing unit" within the meaning of section 15-10-412, MCA.

42 Op. Att'y Gen. No. 80 at 315. This reasoning is equally applicable to a refuse district. A refuse district, as discussed above, has no independent governing body. The district must have the approval of the board of county commissioners before establishing a service fee. § 7-13-231, MCA. Regardless of whether or not the assessment may be considered a "tax," a refuse district would not fall within the meaning of a "special taxing district" as used in section 17-5-1604, MCA.

In order to determine whether a refuse district is a political subdivision under section 17-5-1604(3), MCA, an analysis of the nature and duties of a refuse district is necessary. In 43 Op. Att'y Gen. No. 56 (1990), slip opinion at 5 and 6, I recently acknowledged that while a rural fire district is not a "local government unit" per se, it may be considered a "political subdivision" of the county and therefore eligible to participate in the Interlocal Cooperation Act. *Id.* at 6. See also 38 Op. Att'y Gen. No. 87 at 302 (1980); 35 Op. Att'y Gen. No. 71 at 173, 174 (1974). I concluded that a rural fire district was a "political subdivision" because it was a "public agency" as that term is used in the Interlocal Cooperation Act. I looked to the following criteria:

Fire district trustees govern and manage the affairs of the fire district; have the authority to provide firefighting apparatus, equipment, housing, and facilities for the protection of the district; appoint and form fire companies; and prepare annual budgets.

43 Op. Att'y Gen. No. 56, slip op. at 6. Based on this delegation of powers to the board of trustees of the fire district, I concluded that rural fire districts are "political subdivisions" within the meaning of the Interlocal Cooperation Act. *Id.*

By contrast, refuse disposal districts have no delegation of authority similar to that described in 43 Op. Att'y Gen. No. 56. Section 7-13-215, MCA, expressly provides in pertinent part:

The board of the refuse disposal district ... has the following powers and duties, with the approval of the county commissioners of the counties involved [Emphasis added.]

In Ryan v. Board of County Commissioners, 190 Mont. 273, 620 P.2d 1203, 1207-08 (1980), the Court stated this language means that, "[t]he County Commissioners have been given supervisory authority over its Refuse Board." The Court in Ryan relied upon reasoning in McCarten v. Sanderson, 111

Mont. 407, 109 P.2d 1108 (1941), which described the type of discretion that comes with use of the word "approval":

"Approval" implies knowledge and the exercise of discretion after knowledge [citation omitted], the exercise of judgment [citation omitted], the act of passing judgment, the use of discretion, and the determination as a deduction therefrom [citation omitted], unless limited by the context of the statute.

111 Mont. at 415, 109 P.2d at 1112. Applying this definition, the approval authority vested in the county commissioners, in effect, signifies the authority to supervise the refuse board.

In 37 Op. Att'y Gen. No. 22 at 97 (1977), rural improvement districts were determined to be "local governmental units" because such districts may include more than one county and have governing boards separate and distinct from the boards of county commissioners. 37 Op. Att'y Gen. No. 22 at 96. Refuse disposal districts are dissimilar from rural improvement districts in that they do not have an independent governing body. The board of a refuse disposal district may not take any significant action without first obtaining the approval of the county commissioners of the counties involved in the district. § 7-13-215, MCA. See also §§ 7-13-231 (commissioner approval before raising fees), and 7-13-234, MCA (only the county commissioners may authorize drawing warrants from the refuse district's special fund). Compare §§ 7-12-2123 (rural improvement districts), 85-7-1902 (irrigation districts), 7-13-2218 and 7-13-2221 (water and sewer districts), 76-15-403 (conservation districts), 7-12-1131 (business improvement districts), 7-14-219 (urban transportation districts), 7-34-2122 (hospital districts), and 7-33-2105, MCA (rural fire districts). While this list is not intended to be exhaustive of all of the statutes that delegate authority to independent governing boards, a comparison of them is helpful in distinguishing those governing boards which do not need prior approval of the county commissioners before exercising their powers and duties from refuse boards which do require such prior approval. Because the refuse board is not a separate and independent body and has not been delegated supervisory authority over the refuse disposal district, I conclude that a refuse disposal district cannot be considered a "political subdivision" as that term is used in section 17-5-1604(3), MCA.

I am aware that a refuse disposal district is expressly defined as a "local government" in section 75-10-103, MCA, for purposes of sections 75-10-101 to 125, MCA. I am also aware of the broad powers and duties given such "local governments" under section 75-10-112, MCA. Nevertheless, the powers and duties of a refuse disposal board are specifically defined and limited by section 7-13-215, MCA, not by section 75-10-112, MCA. Section 7-13-215, MCA, addresses only refuse boards while section 75-10-112, MCA, includes refuse boards and other entities. Special statutes normally prevail over

general. § 1-2-102, MCA. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981).

THEREFORE, IT IS MY OPINION:

A refuse disposal district is not a "political subdivision" as that term is used in section 17-5-1604(3), MCA.

Sincerely,

MARC RACICOT
Attorney General