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OFFICIAL OPINION NO. 27

December 30, 1976

Mr. Kenneth R. Beesley
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Beesley:

This is in response to your request for an opinion as to whether a local governmental unit which desires to contract with a private person, firm, or corporation either to manage and operate a sanitary landfill or to collect refuse must award the contract on the basis of competitive bids. You also ask whether the fact that the local governmental unit owns the landfill would affect the answer to your initial question.

ANALYSIS

The Refuse Disposal Act, which is found at Indiana Code, sections 19-2-1-1 through 19-2-1-32, authorizes a county, city, or town to collect and dispose of refuse or to secure the collection and disposal of refuse in one or more of several prescribed methods. The use of a sanitary landfill is one of the methods prescribed at Code section 19-2-1-3. Code section 19-2-1-4 expressly permits a county, city, or town to contract for the collection and disposal of refuse rather than providing those services itself. Your question, then, is whether one of these governmental units, which desires to contract for the collection of refuse or for its disposal using the sanitary landfill method, must award the contract only after receiving competitive bids.

The responsibility for providing for refuse collection and disposal in a county, city, or town generally rests, respectively, with the board of county commissioners, the board of public works, or the town board. Code section 19-2-1-6 expressly requires that the administration of refuse collection and disposal under the Refuse Disposal Act be under

the supervision and control of these particular bodies unless the governmental unit provides otherwise by ordinance. Although the Act, in large measure, concerns the procedures a board must follow to acquire or construct its own collection and disposal facilities, Code section 19-2-1-7 broadly provides that "(a)ny contract or agreement * * * with any contractor or contractors for labor or material, exceeding in amount the sum of one thousand dollars (\$1,000), shall be made under and pursuant to the provisions of (Code section 18-1-6-18)"—a provision which requires notice and competitive bidding of certain contracts. These competitive bidding provisions appear to apply with equal force to any contracts which provide for refuse collection and disposal—regardless of whether the county, city, or town is itself providing the facilities or services or, instead, is employing a private contractor to provide them.

As noted by the Indiana Court of Appeals in the case of *School City of Gary v. Continental Electric Company* (1971), 149 Ind. App. 416, 419, 273 N.E. 2d 293, 296, competitive bidding is designed to "safeguard the public against fraud, favoritism, graft, extravagance, improvidence and corruption, and to insure honest competition for the best work or supplies at the lowest reasonable cost." There is no indication in the Refuse Disposal Act that the General Assembly considered those objectives less meritorious where a county, city, or town is contracting with a private organization to provide facilities or services rather than where it is itself providing them.

This result is not affected by the fact that the county, city, or town owns or does not own the sanitary landfill which the private contractor will operate. If the governmental unit is contracting for labor or material to provide for refuse collection or disposal, that alone brings the competitive bidding requirement into effect.

CONCLUSION

It is, therefore, my Official Opinion that the General Assembly, by enacting the Refuse Disposal Act, requires that a

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county, city, or town which desires to contract with a private person, firm, or corporation, either to manage and operate a sanitary landfill or to collect refuse, *must* award the contract on the basis of competitive bids. The safeguarding of freely-competitive public bidding of contracts has also been a continuing public policy of the State of Indiana. The legislature has provided that competitive bidding of a contract to manage and operate a sanitary landfill is required regardless of whether the county, city, or town owns or does not own the landfill.