

1970 O. A. G.

OFFICIAL OPINION NO. 41

December 29, 1970

The Hon. Robert P. O'Bannon
Indiana State Senator
118 Elliott Avenue
Corydon, Indiana 47112

Dear Senator O'Bannon:

This is in response to your request for my Official Opinion on the following question:

“Are County Councils and Boards of County Commissioners entitled to appropriate County tax funds for maintenance and operation of County Landfill Facilities?”

-ANALYSIS

The statute involved is the “Refuse Disposal Act” Acts of 1965, Ch. 355, as amended by Acts of 1969, Ch. 359, as found in Burns' (1969 Supp.), Sections 48-4245 through 48-4247(i).

Section 5 of the Act, found at Burns' 48-4245(d) *supra*, is set out, in its applicable part, as follows:

“The county council, common council of the city or town board may make appropriations for the * * * operation and maintenance of the refuse collection and disposal premises and facilities or services.

“Such appropriation or appropriations may include the employment of a person or persons and provision of such vehicles and equipment which may be necessary or incidental to the collection or disposal of refuse.”

The statute clearly allows a county council to appropriate county tax funds for landfill facilities, if they so choose; however, it is equally clear from the language of the statute that such councils would be under no *duty* to do so, as the phrase “*may* make appropriations” indicates that such decision is

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discretionary, not mandatory. *City of Lebanon v. Dale* (1943), 46 N. E. (2d) 269, 272; 113 Ind. App. 173.

CONCLUSION

Based on Indiana law, it is my Official Opinion that each county council in Indiana has the statutory authority to appropriate county tax funds for the maintenance and operation of county landfill facilities when in the council's discretion there is a need for such appropriations. Of course, the normal appropriation procedures must be followed. It should be noted also that this authority rests entirely with the county council in each county and not with the board of county commissioners of the county.