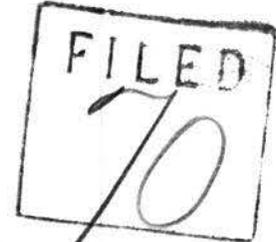


MUNICIPAL CORPORATIONS: City of the Third Class may enter into an exclusive contract with an individual for collection of garbage and assess a fee for its removal.

May 23, 1939

Mr. John S. Phillips
City Attorney
Poplar Bluff, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of April 20th, 1939, which reads as follows:

"I would like to have your opinion, as City Counselor, as to whether a city of the third class may employ a garbage commissioner, whose duties it shall be to collect all the garbage in the City and also to see that all open toilets are cleaned at certain stated intervals, and as to whether this commissioner can compel the people of this city to pay him a fee for the removing of this garbage and for the cleaning of the open toilets.

"It is my opinion, and I so stated to the Council that we would not have the power to give anyone person a concession of this kind, due to the fact that there would be discrimination against other people who might want to do this work. The facts are, that there are several people in the City who have been in the habit of collecting garbage and of cleaning open toilets. Of course, if the City was able to appoint a garbage commissioner to take care of these duties, it would be much easier to handle, due to the fact that it would be much easier to control him and see that his work was done.

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"There has been no tax levy for this purpose as our tax levy is up to the limit prescribed in the statute, and it would be a fee in addition to this for the purposes which I have stated. It is further my opinion that if the people of Poplar Bluff wish to pay a fee to the garbage commissioner for the purposes stated above, that they would have a perfect right to do so, but that the City, by ordinance, could not compel them to do it.

"I have been unable to find anything in the Statute of the State, or anything in the chapters regulating cities of the third class in regard to this, and the Mayor and the City Council and I would appreciate very much an opinion as to this matter."

Section 6807, R. S. Mo. 1929, reads as follows:

"The council may make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city. * * * * *"

Under the above section a city of the third class may pass ordinances for the prevention of contagious diseases and if garbage becomes detrimental to the health of the community, a city of the third class may pass an ordinance

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which would allow the city to contract with an individual and assess a fee for the collection of the garbage. It was so held in the case of Valley Spring Hog Ranch Co., v. Plagmann et al, 220 S. W. 1, 1. c. 6; in which the court said:

"Of course, every ordinance in the exercise of the police power must be reasonable, but, as shown above, there is nothing in this Joplin ordinance which is unreasonable. The city had the right to contract with either one or more than one person to collect and dispose of its garbage. Nor is the value of garbage such as precludes the exercise of the police power for its destruction or otherwise disposal.

"We are, however, cited to the case of River Rendering Co. v. Behr, 77 Mo. 91, 46 Am. Rep. 6. This case reached this court by appeal from the St. Louis Court of Appeals, and the opinion of that court is found in 7 Mo. App. 345. Many of the courts draw a distinction between garbage (which is concededly of small value even during the time between its creation, and the time of its decay or decomposition) and dead animals, which for certain purposes have some substantial value. In some cases it is held that a reasonable time (short time) should be given the owner to get what value there was in the carcass. We might distinguish the instant case from the Behr Case, supra, on the theory of there being substantial value to the carcass, but we deem that case out of harmony with the great weight of authority. The opinion of the Court of Appeals is more in line with modern authority on the subject.

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"The ever-present house fly and other flies will reach the carcass of dead animals as quickly as they reach the open garbage can. Germs of disease may be thus spread in thickly populated communities. Even the additional value of carcasses should not curb the police power in regulating their removal and disposition."

Also, in the case of Harper v. Richardson, 297 S. W. 141, 1.c. 145, where the court said:

"It is also the law, as insisted by plaintiffs, that the owners of premises where garbage is collected should pay for its removal. 15 A. L. R. 292, note; 27 A. L. R. 972; Hog Ranch v. Plagmann, supra; Reduction Co. v. Reduction Co., 199 U. S. 306, 26 S. Ct. 100, 50 L. Ed. 204.

"It is also insisted that the power to regulate includes the power to make such regulation effective. The provisions of sections 8, 19, 20, and 24 were directed to this end, in that they provided a penalty of arrest and punishment for a violation of their provisions. These provisions are salutary and proper."

Under the holding in the above case the court set out that where garbage is collected by an exclusive collector the owners of the premises should pay for its removal.

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CONCLUSION.

Under the above authorities it is the opinion of this department that a city of the third class under the statute and by virtue of its police power may by ordinance empower the city to enter into a contract with a private individual who may have the exclusive right for the collection of garbage and the city can compel the owners of the property where the garbage is collected to pay a fee for the removal.

Respectfully submitted,

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APPROVED:

HARRY H. KAY
(Acting) Attorney General

WJB:RW