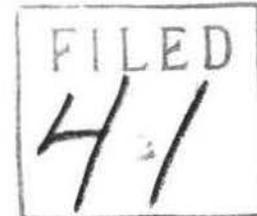


COUNTY OPTION DUMPING GROUND LAW:  
STATE DIVISION OF HEALTH:  
COUNTY COURT:  
MUNICIPAL CORPORATIONS:  
"PERSON":

Both State Division of Health and County court have authority to enforce provisions of sections 64.460 to 64.487, MoRS 1959; all disposal areas outside the limits of cities, towns and villages must be licensed. Any person who disposes of ashes, garbage, rubbish or refuse in an unlicensed area is guilty of a misdemeanor.

April 4, 1961

Honorable William W. Hoertel  
Prosecuting Attorney  
Phelps County  
Rolla, Missouri



Dear Mr. Hoertel:

This is in response to your request for an opinion dated January 17, 1961, which reads, in part, as follows:

"This letter is a request for an Attorney General's opinion concerning the County Option Dumping Law, Sections 64.460-487, R. S. Mo. 1949. The County Court of Phelps County has been confronted with a dumping ground problem for some time, and their request is that I find out from you if and when the Court accepts the County Option Dumping Law, whether or not the Missouri State Health Department will have jurisdiction, and as a matter of practice will enforce this county law. If the State Health Department does not have the authority, then will the County Court of Phelps County have the authority to enforce the law?

"A second problem involves the fact that Phelps County has three reasonably large communities, to-wit: St. James, Newburg, and Rolla. It is my understanding that Newburg and St. James are completely satisfied with their dumping areas and methods. However, Rolla is not. Therefore, we would like to know if the law is accepted by the County Court whether or not we must force St. James and Newburg to comply along with the City of Rolla. It is my understanding that to force St. James and Newburg to comply would create a hardship upon them."

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The County Option Dumping Ground law was enacted in 1955 and is a comparatively new law in Missouri. Only a few counties in the state have placed the law in operation and there are no reported cases dealing directly with this law. Therefore, a determination of your questions must be made by a reading and interpretation of the statute itself.

Your first question is whether the Missouri State Health Department or the county court has the jurisdiction and authority to enforce the law. The provisions of the law relating to this question are as follows:

Section 64.467.

"1. Any person desiring a license to operate a disposal area shall make application therefor to the county court on forms provided by it."

Section 64.470.

"1. Upon receipt of the application the county court shall notify the state division of health which shall inspect the proposed site and determine if the proposed operation complies with sections 64.460 to 64.487 and the rules and regulations adopted pursuant thereto.

"2. If the division of health reports favorably on the application, and the county court finds that the applicant is a responsible and suitable person to conduct the business, then the county court shall issue a license to the applicant.

"3. All licenses shall expire one year after issuance but may be renewed upon payment of an annual fee of twenty-five dollars."

Section 64.473.

"The county court may revoke any license, after reasonable notice and hearing if it finds that the disposal area is not operated in a sanitary manner as required in sections 64.460 to 64.487."

Section 64.477.

"The state division of health shall prepare and publish rules and regulations which

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shall contain sanitary standards for disposal areas. The division of health shall inspect all licensed disposal areas and enforce all provisions of sections 64.460 to 64.487."

Section 64.487.

"Any person violating sections 64.460 to 64.487 shall be guilty of a misdemeanor."

From a reading of Sections 64.467(1) and 64.473, V.A.M.S., 1949, Laws of Missouri, 1955, page 348, quoted above, it is clear that the county court has the jurisdiction and authority to issue a license to operate a disposal area and to revoke that license if the disposal area is not operated in a sanitary manner as required. It is equally clear from a reading of Section 64.470, quoted above, that the State Division of Health has the jurisdiction, authority and duty to inspect the proposed site and make a report thereon. Section 64.477 directs the State Division of Health to prepare and publish rules and regulations and places upon the Division of Health the duty to enforce all provisions of the County Option Dumping Ground law. It is clear that both the county court and the State Division of Health have authority to enforce this law. The county court can enforce it in the process of issuing a license and revoking the license for failure to comply with the law. The State Division of Health has the duty and authority to promulgate rules and regulations and to enforce all of the provisions of the law.

You have asked whether the Health Department, as a matter of practice, will enforce this law. The Missouri Division of Health has promulgated rules and regulations governing refuse disposal areas and prepared inspection records, and has made inspections under this law. A copy of these rules and regulations is attached for your information. In sending you these regulations, this office is in no way attempting to prognosticate any further action by the State Division of Health, but we are simply calling your attention to things which have been done in the past.

One further method of enforcement is contained in Section 64.487, which provides that any person violating these sections shall be guilty of a misdemeanor, and therefore the prosecuting attorney of the county can also prosecute for violations and thereby enforce the County Option Dumping Ground law.

Your second question concerns the possibility of forcing cities within the county to comply with the law. The provisions of the law relative to this question are as follows:

Section 64.480.

"Sections 64.460 to 64.487 shall not be construed to prohibit any person from disposing of any ashes, garbage, rubbish or refuse from his own household upon his own land as long as such disposal does not create a nuisance. Sections 64.460 to 64.487 shall not apply to any disposal area operated by or under the control of any city, town or village and being located within the boundaries of such city, town or village."

Section 64.463.

"No person shall dispose of any ashes, garbage, rubbish or refuse at any place except a disposal area licensed as provided in sections 64.460 to 64.487."

Section 64.467.

"Any person desiring a license to operate a disposal area shall make application therefor to the county court on forms provided by it."

Section 64.487.

"Any person violating sections 64.460 to 64.487 shall be guilty of a misdemeanor."  
(Emphasis supplied.)

From the context of the entire law, it is felt that the law is not designed to regulate a city garbage disposal system as such, but it is designed to regulate areas used as dumping grounds. Section 64.480 specifically exempts any disposal area operated by or under the control of any city which is located within the boundaries of such city from the operation of the law. The remaining sections quoted above apply to persons operating a disposal area or disposing of rubbish or refuse. These sections of the law are clear in exempting a city-operated disposal area within the boundaries of such city and they are also clear in applying to any person operating a disposal area anywhere in the county, with the exception of the disposal of rubbish or refuse by a person upon his own land from his own household. The real question involves the situation of a disposal area or dumping ground outside the city limits of a city which may be leased to or owned by the city and which is operated and controlled by the city. A general rule of statutory construction is found in 82 C.J.S., Section 382, page 894, where we find the following:

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" \* \* \* Another generally accepted rule of construction is that an exception of a particular thing from the general words shows that, in the opinion of the law-giver, the thing excepted would be within the general provision had not the exception been made. \* \* \*"

A principle of law applicable to municipalities is found in 62 C.J.S., Section 3(c), page 73, where it is said:

"Municipal corporations have been held included within the term 'person,' at least in their private capacities, although not when such construction is not made imperative from the context or intent with which the word 'person' is employed. \* \* \*"

The provisions of Section 64.480 exempting from the operation of the County Option Dumping Ground law a disposal area operated by or under the control of a city, town or village which is located within the boundaries of such city, town or village, make clear the legislative intent that all disposal areas outside the limits of cities, towns and villages are subject to the provisions of the County Option Dumping Ground law in any county to which such law is applicable, and therefore all disposal areas outside the limits of cities, towns and villages must be licensed under the provisions of the County Option Dumping Ground law (where such law is applicable) regardless of who owns, operates or controls such disposal areas.

Under the provisions of Section 64.463, supra, no person shall dispose of ashes, garbage, rubbish or refuse at any place except a licensed area, except under the provisions of Section 64.480 which provide that such person may dispose of ashes, garbage, rubbish or refuse from his own household upon his own land if such disposal does not create a nuisance.

Therefore, any person, which term would include an employee of a city, who disposes of ashes, garbage, rubbish or refuse in an unlicensed disposal area outside of the limits of a city, town or village, except a person who disposes of ashes, garbage, rubbish or refuse from his own household on his own land, would be subject to prosecution for violation of the provisions of Section 64.487.

We do not deem it necessary to determine in this opinion whether or not a city would be subject to being fined as a result

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of a conviction in a criminal prosecution for operating an unlicensed disposal area outside the city limits in a county where the County Option Dumping Ground law is in effect, and we do not rule on such question. On October 3, 1956, this office issued an opinion to Honorable H. K. Stumberg, Prosecuting Attorney of St. Charles County, a copy of which is enclosed for your further information.

CONCLUSION

It is the opinion of this office that the State Division of Health and the county court of a county to which the provisions of the County Option Dumping Ground law are applicable have the authority to enforce the provisions of such law.

It is further the opinion of this office that all disposal areas outside the limits of cities, towns and villages in counties in which the County Option Dumping Ground law is in effect must be licensed. Any person, including an employee of a city, town or village, who disposes of ashes, garbage, rubbish or refuse in any unlicensed disposal area outside the limits of a city, town or village is guilty of a misdemeanor, except that such person may dispose of ashes, garbage, rubbish or refuse from his own household on his own land if such disposal does not create a nuisance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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Encs