



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Solid Waste Management

Statutory Authority

See generally Municipal Home Rule Law, § 10(1)(ii)(a)(12)

Counties, Cities, Towns and Villages – Any municipality may enter into a contract with any other municipal corporation or public or private corporation or individual for the construction and operation of a solid waste management resource recovery facility, for the processing of solid waste, or for a system of collection and disposal of municipal solid waste through resource recovery. [General Municipal Law, § 120-w(2)] Authorized to require source separation and segregation of recyclable or reusable materials from solid waste, after holding public hearing. May use public property as recycling center. [General Municipal Law, § 120-aa]

Any municipality may contract with any other municipality for use of a municipally operated public dump. [General Municipal Law, § 99-a]

Local laws, ordinances or regulations in this area must not be inconsistent with Environmental Conservation Law, Article 27, Title 7 or with rules and regulations promulgated pursuant to it. [Environmental Conservation Law, § 27-0711]

Counties – Authorized to acquire land for waste disposal sites, to construct plants and operate collection facilities. [County Law, § 226-b(1)]

County may regulate or prohibit dumping of waste material in creeks or streams in watershed areas improved under any flood control or soil erosion program. [Municipal Home Rule Law, § 10(1)(ii)(b)(11)]

Cities – Authorized to provide trash collection under general health and safety powers. [General City Law, § 20(13) and (23)]

Authorized to acquire land for and operate a city dump under general health and safety powers. [General City Law, § 20(13) and (23)]

Towns and Villages – Two or more towns or villages may jointly create a garbage and refuse district. [Unconsolidated Laws, Title 16, Chapter 15]

Towns – Authorized to establish dumping grounds and acquire necessary land. [Town Law, §§ 130(6), 220(4)]

Solid waste management facilities authorized, subject to possible referendum. [Town Law, § 221(1)] May also be provided upon petition of the residents. [Town Law, § 81(1)(g)]

Specifically authorized to contract for up to ten years for use of village dumping grounds. [Town Law, § 64(20-a)]

Villages – Authorized to provide trash collection under general health and safety power. [Village Law, § 4-412(1)]

Authorized to purchase land for the establishment of a public waste disposal site or plant and to operate the site or plant. [Village Law, § 4-412 (3) (4)]

Special Districts

Counties - Authorized to establish refuse and garbage districts. [County Law, Article 5-A]

Towns – Authorized to establish refuse and garbage districts. [Town Law, Article 12 and Article 12-A]

Certain town sanitation districts are governed by the town board as well as by an elected board of commissioners. [Town Law, Article 13]

Public Authorities

A number of solid waste management and resource recovery public authorities have been established by State legislation. See generally, Public Authorities Law, Article 8, Titles 13 through 13-M.

Selected Court Cases

Niagara Mohawk Power Corp. v. Town of Watertown (2005) 6 N.Y.3d 744. Respondent Town appropriately imposed a special ad valorem levy on petitioner power corporation's transmission and distribution facilities to fund a garbage district. Special ad valorem levies are limited to benefited properties. Real property is benefited if it is capable of receiving the municipal service at issue, based on innate features and legally permissible uses. Special ad valorem levies are unauthorized where the inherent characteristics of the subject properties preclude them from receiving the particular municipal services at issue. Petitioner's vacant or undeveloped lands improved by electric and gas transmission fixtures and appurtenances in the town benefited from the Town's garbage district. There was a sufficient theoretical potential of the properties to be developed in a manner that would result in the generation of garbage which these properties already produced in the form of landscaping debris.

Town of Concord v. Duwe (2005) 4 NY3d 870. The Solid Waste Management Act explicitly delegated to municipalities broad powers to manage their own waste problems so long as the local legislation complied with the minimum applicable requirements set forth in the legislation (ECL 27-0711)

N.Y. Tel. Co. v. Supervisor of Oyster Bay, 4 N.Y.3d 387; 828 N.E.2d 964; 796 N.Y.S.2d 7; 2005 N.Y. Town under Real Property Tax Law § 102(14) was not authorized to charge a special ad valorem levy for garbage collection on telephone company's "mass properties," which consisted of telephone poles and wires in enclosures for electric conductors situated on private and public land, because properties did not and could not receive benefit from the service. (cf., *Niagara Mohawk v. Town of Watertown, et. al.* 6 N.Y.3d 744 (holding that "mass properties", on real property owned by utility, are benefited by inclusion in a water district and that otherwise vacant lands improved by utility fixtures benefit from that town's garbage district because there is sufficient "theoretical potential" that properties will someday be improved in a manner that will generate garbage and where properties already produce garbage in the form of landscaping debris.)

New York Telephone Co. v. Supervisor of Town of North Hempstead, 2005 19 A.D.3d 465, 796 N.Y.S.2d 715. Special ad valorem levies for garbage and refuse collection services could not be imposed on certain parcels of real property owned by telephone company, where properties did not and could not receive any direct benefit from that service.

American Ref-Fuel Co. of Niagara, L.P. v. Northeast Southtowns Solid Waste Management Bd., 2002, 291 A.D.2d 861, 737 N.Y.S.2d 494. Intermunicipal solid waste management board lacked authority to act on behalf of all of its members in awarding solid waste disposal contract; although board purported to act on behalf of its 36 participating municipalities pursuant to an agreement authorizing the board to coordinate the solicitation of bids, that agreement was signed by only 13 members and approved by the majority vote of only six of the governing bodies of those 13 members.

Dobrzanski v. Village of Hamburg, (4 Dept., 2000) 277 A.D.2d 1005, 715 N.Y.S.2d 819, appeal dismissed 96 N.Y.2d 791, 725 N.Y.S.2d 640, 749 N.E.2d 209. Amendment to village's solid waste policy providing village would not collect garbage unless it was placed in clear bags was valid exercise of police power; amendment bore a reasonable relation to the public good by enabling village to monitor compliance with the municipal solid waste law without the necessity of ripping open garbage bags to inspect their contents, thereby reducing the interference with rights of residents.

Opinions of the Comptroller and Attorney General

Comptroller Opinion 94-17: *General Municipal Law*, §§ 120-w, 120-cc; *Municipal Home Rule Law*, § 10(1)(ii)(9-a). A city, by local law, may provide that unpaid user fees imposed to finance the cost of recycling services, including any interest or penalties, may be re-levied with the next annual real property tax in accordance with the procedures prescribed in *General Municipal Law*, §120-cc.

Attorney General Opinion 93-42. While a county establishing and operating a solid waste management facility should consider local land use regulations, it need not obtain a permit from a town in the county as a condition to operation of the facility.

Comptroller Opinion 92-18: *Municipal Home Rule Law*, § 10(1)(ii)(a)(9-a); *Town Law*, §§ 81[1][h], 220[5], 221. A town which provides solid waste disposal facilities as a town-wide function and has enacted legislation which requires solid waste to be processed at the town's facilities may finance the facilities through the imposition of a "solid waste generation fee" as a user fee on the owners of all improved properties within the town that generate solid waste. The fee may be imposed retroactively for a short period of time unless the retroactivity would be so harsh and oppressive as to violate constitutional due process guarantees.

Comptroller Opinion 92-40: County Law, § 226-b. A county may establish rates or fees for the use of a county landfill pursuant to County Law, § 226-b which are reasonably related to the cost of providing the landfill. Such rates or fees, however, may not be imposed to generate revenues in excess of such cost for the purpose of offsetting the general cost of county government.

Comptroller Opinion 91-14: General Municipal Law, §119-o; Town Law, §§198(9), 209-e(3). A town board, on behalf of a refuse and garbage district, may contract with villages located within the town but excluded from the district for the collection of village refuse. The town board's resolution authorizing the contract would not be subject to referendum.

Comptroller Opinion 91-32: State Constitution, Art. I, §7(a), Art. VIII, §1; Public Authorities Law, §2045-a, *et seq.* (1) The prohibition against gifts and loans does not apply to the Onondaga County Resource Recovery Agency [OCRRA], a public benefit corporation. The county, however, is precluded by this prohibition from reimbursing property owners for devaluation of their property resulting from the operation of facilities by OCRRA. (2) If the county were to exercise its powers of eminent domain on behalf of the OCRRA or the county's role in the siting of OCRRA facilities were found to be in the nature of a compensable taking, however, the county could compromise claims against it in the nature of inverse condemnation. (3) The OCRRA is neither expressly nor implicitly authorized to establish a program to reimburse property owners for devaluation of their property resulting from operation of the Agency's facilities, in the absence of claims against it for the operation of those facilities as a nuisance. In the event that claims against the OCRRA lie for operation of the facilities as a nuisance, OCRRA, pursuant to its authority to settle claims against it, could agree to reimburse property owners for devaluation of their property attributable to such operation.

Comptroller Opinion 90-41: Village Law, §§14-1400, 14-1416, 14-1428. A village board of trustees may construct sewers and determine that the cost of such construction be borne wholly by the benefited properties.

Comptroller Opinion 90-60: General Municipal Law, §§109-b, 120-w. A county may enter into an installment purchase contract to finance the construction of a recycling center under General Municipal Law, § 120-w. Such a contract, however, is subject to the provisions of General Municipal Law, § 120-w, which relates to installment purchases of equipment, machinery and apparatus, to the extent that such provisions are not inconsistent with General Municipal Law, § 120-w.

Comptroller Opinion 88-13: General Municipal Law, §119-o; Village Law, §4-412. A village may provide for refuse collection services on a cooperative basis either by jointly acquiring equipment and hiring personnel or by one village acting as "lead agency" and contracting to provide the service to the others.

Comptroller Opinion 88-62: General Municipal Law, § 6-c. A town may establish a capital reserve fund to finance the cost of closing and capping a landfill owned by the town and may pay into that fund landfill fees imposed to defray such cost.

Attorney General Opinion 81-245. County may use police power to prohibit importation of out-of-county solid waste or to regulate private landfills.

Comptroller Opinion 79-110. A town may agree to sell the by-products resulting from operation of a "solid waste to energy generating facility" to private industry.