



COMMONWEALTH of VIRGINIA

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The Honorable Barbara J. Comstock
Member, House of Delegates
Post Office Box 6156
McLean, Virginia 22106

Dear Delegate Comstock:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether Fairfax County has the authority to require residents who are currently using a private trash collection service to join the county trash collection service.

Response

It is my opinion that the county may require residents to give up their private trash collection service and join the service provided by the county provided that the statutory notice, hearing and waiting period requirements are met, or 55 percent of the affected property owners petition the governing body to take over the collection service. I further conclude that a county may, but is not required to, allow residents to opt out of the public trash collection service and maintain a parallel private collection service.

Background

You relate that Fairfax County plans to create new sanitary districts that would provide mandatory county trash collection in McLean. Currently, a group of local citizens manages its garbage disposal through a nonprofit corporation that employs a county-licensed private trash company. You indicate that the county service would supplant this service and that the county would add a service charge to these residents' real estate property tax bills. You further note that county officials have provided mixed responses about whether residents would be able to opt out of the county's refuse collection service. Finally, you report that many of the affected citizens are opposed to the county's plan.

Applicable Law and Discussion

Section 15.2-901 of the *Code of Virginia* grants localities the authority to require property owners to remove from their property "all trash, refuse, litter and other substances which might endanger the

health or safety of other residents.”¹ The contours of that authority are governed by §§ 15.2-927 through 15.2-939.

The General Assembly has provided that “it has been and is continuing to be the policy of the Commonwealth to authorize each locality to *displace* or limit competition in the area of garbage, trash or refuse collection services”² and stated that “governing bodies are directed and authorized to exercise all powers regarding garbage, trash, and refuse collection . . . notwithstanding any anti-competitive effect.”³ The Code defines “displace” to “mean[] a locality’s . . . provision of a service which prohibits a private company from providing the same service and which the company is providing at the time the decision to displace is made.”⁴ Although the law does not explicitly authorize localities to mandate use of its trash collection over that of another provider, the language of these statutes clearly establishes that authority. I therefore conclude that the county may require its residents to join the trash collection service it provides.⁵

The Code sets forth certain requirements the locality must satisfy before it exercises this authority. First, the county must hold at least one public hearing seeking comment on the advisability of the locality providing such service, and the county must provide notice of that hearing to the public and to all identifiable private companies that provide the service in its jurisdiction.⁶ Second, the governing body must make a written finding of at least one of the following: 1) adequate privately-owned collection services are unavailable; 2) the use of privately-owned and operated services has created a nuisance or has endangered public health; 3) available privately-owned services cannot provide the needed services in a reasonable and cost-efficient manner; or 4) displacement is necessary to develop or operate a regional refuse collection system.⁷ After making the requisite finding, the county then has one year to take the measures necessary for it to provide the service.⁸ Finally, before providing the service, the locality must either provide five years’ notice to the displaced private company, or pay the company an amount equal to its previous 12-month’s gross receipts from providing the service to the displacement area.⁹

In addition, a county may assume exclusive control over trash collection when “at least 55% of the property owners in the displacement area petition the governing body to take over such collection service.”¹⁰ It therefore is my opinion that a locality may require all the residents of a displacement area to join its trash collection service if at least 55% of that area’s property owners have petitioned the county to take over trash collection.

¹ VA. CODE ANN. § 15.2-901(A)(1) (2008).

² Section 15.2 -931(B) (2008) (emphasis added).

³ *Id.*

⁴ Section 15.2-934 (2008).

⁵ A prior opinion of this Office expressly concluded that “a county is not authorized to establish a mandatory garbage pickup and disposal service.” 1980-81 Op. Va. Att’y Gen. 123; but that opinion has been superseded by subsequent legislation. See 1984 Va. Acts ch. 763 at 2083; 1995 Va. Acts ch. 660 (adopting the provisions in notes 2, 3, *supra.*, respectively).

⁶ Section 15.2-934.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Finally, given the broad authority conferred upon localities,¹¹ a locality can, but is not required to, maintain a parallel public and private trash service. The county could, therefore, allow residents to opt out of the public trash collection service and maintain a private service.

Conclusion

Accordingly, it is my opinion that Fairfax County may compel residents who currently use trash collection services provided by a private entity to join the county trash collection program, provided that either the statutory requirements for service displacement are met, or 55% of the property owners in the displacement area want to participate in the county services. I also conclude that a county may, but is not required to, allow residents to opt out of the public trash collection service and maintain a parallel private collection service.

With warmest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹¹ Section 15.2-931(B).