

**RECEIVED**

NOV 05 2009

**OPINION COMMITTEE**

C. R. (KIT) BRAMBLETT  
HUDSPETH COUNTY ATTORNEY

FILE # ML-46239-09  
I.D. # 46239

P.O. Box 221528  
El Paso, Texas 79913-1528

(915) 877-4173 (El Paso Office)  
(915) 986-2495 (Ranch)  
(915) 877-7146 (Fax)

November 2, 2009

Attorney General Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0837-GA**

Re: Hudspeth County Solid Waste Collection Fees by Esperanza Water Service Co.,  
Inc.

Dear Committee Members:

Hudspeth County collects trash over much of the County. Esperanza Water Service Co., Inc. is a private utility which furnished water to a subdivision near Ft. Hancock, Texas which is in Hudspeth County. Hudspeth County would like to enter into a Contract with Esperanza Water Service Co., Inc. for the collection of solid waster disposal fees pursuant to V.T.C.A., Health & Safety Code Section 364.013. Hudspeth County accurately collects the solid waste and disposes of it. Esperanza Water Service Co., Inc. would only be collecting the fee for the County. The key to being able to collect the disposal fee is whether or not the water utility can cut off the customer's water service for the non-payment of the solid waste disposal fee. It appears to me that under H & S Code 364.034(d) that Esperanza Water could terminate water utility service, if it had a Contract with Hudspeth County and the solid waste disposal fee was not paid. Attorney Ralph Williams Richards who represents Esperanza Water Service Co., Inc. is concerned that this may not be the case and has set out in a letter to me, along with Exhibits as to why he has questions about the private utility being able to cut off water services.

I am enclosing the original of his letter to me along with the Exhibits and am requesting an attorney general opinion as to whether my interpretation of H & H Code 364.034(d) is correct or if there would be problem for Esperanza Water, if they should enter into this Contract and then be required to cut off water service for the non-payment of solid waste disposal fees.

Sincerely,



C. R. KIT BRAMBLETT  
Hudspeth County Attorney

cc: Ralph Wm. Richards

**RALPH Wm. RICHARDS**  
**ATTORNEY AT LAW**  
1150 Southview Drive  
El Paso, Texas 79928  
(915) 298-9900 [Office]  
(915) 298-9992 [Fax]

October 16, 2009

Mr. Kit Bramblett  
Attorney at Law  
P.O. Box 221528  
El Paso, TX 79913-1528

Re: Esperanza Water Service Company, Inc.  
Solid Waste Collection Fees for Hudspeth County

Dear Mr. Bramblett:

Following up on our discussions of this matter, I have outlined what I believe is the legal question and the issues regarding the interpretation of the statutes as I understand it. Because of the very serious issue of "cutting off" a water customer for non-payment, we are looking for some assurance that you and the state/attorney general believe that everyone is interpreting this statute correctly.

**I. Factual Background.**

Our understanding of the factual background is as follows:

That Hudspeth County, pursuant to the authority granted to it by V.T.C.A., Health & Safety Code Section 364.013, has commenced a collection of solid waste within Hudspeth County. Hudspeth County has requested Esperanza Water Service Company, Inc., hereinafter "Esperanza Water," to enter into a contract and agreement with Hudspeth County to collect for the County the fees due for solid waste collection from Esperanza Water's customers. Esperanza Water's role would be only for the collection of the fees due to Hudspeth County for solid waste collection and Esperanza Water would not be responsible for collection of the solid waste. The collection of fees for Hudspeth County would be done by Esperanza Water only with regard to Esperanza Water's customers in its service area where it is also providing water utility services. In order to induce people to pay the fees due for collection of solid waste, Hudspeth County has asked Esperanza Water to agree that if a common customer from whom Esperanza Water is collecting both water utility fees and solid waste collection fees fails to pay their solid waste collection fee, that Esperanza Water would terminate/cut off that customer's water service for non-payment of the solid waste collection fees without regard as to whether or not that customer was also delinquent or had failed to timely pay its water utility charges.

Esperanza Water is privately held water utility company regulated by the Texas Commission on Environmental Quality (TCEQ) and subject to the TCEQ's Utility Regulations found in Chapter 291 and operates within a certificated area and charges rates which are subject to regulation and approval by the TCEQ.

The TCEQ regulations in Chapter 291.87(e)(3) provide as follows with regard to the format of bills for water utilities:

- (3) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water Code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

TCEQ Chapter 291 Utility Regulations in Section 291.87(g) provide that a retail public utility providing water service may contract with the public utility service providing sewer service to collect sewer service provider fees as part of the consolidated billing process and the regulations provide detailed procedures for termination of water utility service for failure to pay for sewer services. See Chapter 291.87(g)(4) and Chapter 291.88 (copies attached).

TCEQ Utility Regulations in Section 291.88(2) sets forth the reasons that a utility service may be disconnected after proper notice.

Among the numerous reasons listed, the utility regulations in Section 291.88(a)(2)(F) states:

- “(F) Failure to pay solid waste disposal fees collected under contract with the county or other public agency.” (copy attached)

The question that we are dealing with is addressed by V.T.C.A. Health & Safety Code Section 364.034 (copy attached), hereinafter “H&S Section 364.034.”

## **II. Review of Applicable Statutes.**

H&S Section 364.034(b)(3) provides that the fee for solid waste collection may be collected by another private or private entity that contracts with the county to collect the fees.

H&S Section 364.034(c) addresses what may be contained in a contract between the county and a public or private utility to collect fees for services provided under this section. The key provision is found in H&S Section 364.034(d) which reads as follows:

- (d) To aid enforcement of fee collection for the solid waste disposal service:
  - (1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent

in payment of solid waste disposal service fees until the delinquent claim is fully paid; and

- (2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend **service** of that utility in addition to the suspension of solid waste disposal **service**, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid. (emphasis added)

It would appear that the purpose of 364.034(d)(1) is to authorize the county or a public or private entity that has contracted with the county to provide solid waste collection service to suspend the solid waste collection service of a person who is delinquent in payment of the solid waste disposal service fees until the delinquent claim is fully paid. That section refers to the entity providing the service and says they may suspend the service. I believe the only reasonable legal interpretation of the term "service" as used in 364.034(d)(1) means the actual collection of the solid waste.

In 364.034(d)(2), it addresses the collection of the solid waste disposal fees. The language that causes me concern regarding the interpretation is also in that section. In order to be able to highlight that language, I am again quoting 364.034(d)(2):

- (2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend **service** of that utility in addition to the suspension of solid waste disposal **service**, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid. (emphasis added)

The highlighted language above seems to imply that the Legislature thought that this third-party public or private utility would not only be providing its regular utility service, i.e. water, but in addition, would be providing the solid waste disposal service pursuant to a contract with the county. How else could the water utility company if it were only doing billing suspend the solid waste disposal service that is being provided by the county or a third party?

In our case, Esperanza Water would have no power or actual ability to suspend the solid waste disposal service since it is not providing that service to those customers that it would be billing. I believe that there is a question as to whether or not the Legislature intended to authorize a utility company such as a private water company who is also providing **only** billing services to the county for its solid waste collection service to suspend the water utility service to its customers because the customer had failed to pay their solid waste collection fees. If both services were under the control of one entity, then there is assurance that if one service is suspended that the other service would also be suspended since the same provider is controlling both services. In the instant case, Esperanza Water could suspend water service to one of its customers for failure to pay the solid waste disposal service/collection fee and, actually, the customer could still be receiving solid waste collection service from the county provider and might also still be current in payment of its water utility bill.

I would further point out that the connector between H&S Section 364.034(d)(1) and (2) is the word "and" and not the word "or." It would therefore appear that (d)(2) was intended to be tied to the service that has been provided under (d)(1). I think that (d)(2) is included in the statute for purposes of clarification that a utility that was also providing solid waste collection services has the authority to terminate its utility service in addition to the suspension of solid waste disposal service to a customer who is delinquent in the payment of the solid waste disposal service fees.

It is interesting to note that the statute does not anywhere specifically indicate that if a customer is paying its solid waste disposal service fees but not paying the other utility, i.e. water, that there is authority to suspend collection of the solid waste by reason of delinquency of another utility account such as a water bill.

It would also appear that the provisions of V.T.C.A. Health & Safety Code Section 364.037 (copy attached) would be inconsistent with an overly broad reading of H&S Section 364.034, since 364.037 having to do with the agreements with other political subdivisions for collection of past due utility or solid waste disposal service fees since it is limited to agreements with other counties or public agencies or municipalities that operate utility systems or other political subdivisions acting on behalf of a municipality, county, or public agency (see Health & Safety Code Section 364.037 (a)). Private utilities are notably absent from provisions of 364.037.

It would appear that 364.034(d)(2) could be interpreted to have been intended to be applicable to a public or private utility that had contracted with the county to not only bill and collect the fees for the solid waste disposal, but to also actually provide that service to its customers for the county and therefore is in control of both services and could effectively terminate one or both services for non-payment of the utility bill.

Because of the very detailed regulations by the TCEQ regarding termination of water utility services for non-payment, Esperanza Water would be concerned about terminating a customer's water service if that customer failed to pay a solid waste disposal/collection service fee that was included on the customer's water bill without clear, specific authority under the utility regulations and under the V.T.C.A. Health & Safety Code Section 364.034.

The only case cited on point is a 1972 case which involved the City of Breckenridge which was providing water, sewer and garbage disposal service and then sought to discontinue water service to the premises when the occupant fails to pay the city garbage collection charge. Since the governmental entity in that case was providing all of the services, that case does not really provide any guidance to the present situation.

### **III. Conclusion.**

The Utility Regulations in Chapter 291 authorize inclusion on water utility bills of fees for solid waste disposal fees collected under a contract with the county or other public agency (291.87(e)(3)).

Mr. Kit Bramblett

10/16/2009

Page 5 of 5

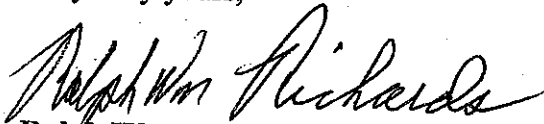
Chapter 291 of the Utility Regulations also provides that utility services may be disconnected after proper notice for failure to pay solid waste disposal fees collected under contract with the county or other public agency (291.88(a)(2)(F)).

That leaves us with the final question of whether or not Health & Safety Code Section 364.034 allows a private utility that is **only** responsible for collecting the fees due for solid waste disposal is authorized to suspend water utility services for failure to pay the solid waste collection fees. While I believe that the statute could be read to provide that conclusion, I also believe that based on the analysis described above that this is a gray area and is not clear and that the courts could interpret it otherwise and hold that the private utility, in addition to billing the fees for the solid waste disposal by contract or otherwise, would also have to be actually involved in the process of providing the service to come under the statute.

I would appreciate your thoughts and comments on this and as we have discussed, perhaps Hudspeth County can obtain an opinion from the Attorney General's Office with regard to its interpretation of H&S Section 364.034(d). Esperanza Water would be much more comfortable if we had that opinion before proceeding to implement an agreement for collection of fees that includes an agreement that Esperanza Water will terminate water utility service to any customer who does not pay their solid waste disposal fees.

If you have any questions or want to discuss this further, please call me.

Very truly yours,



**Ralph Wm. Richards**

**Attorney at Law**

RWR/vr

Enclosures

**SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION**

**§§291.80 - 291.90**

**Effective July 10, 2008**

**§291.80. Applicability.**

Unless otherwise noted, this subchapter is applicable only to "water and sewer utilities" as defined under Subchapter A of this chapter (relating to General Provisions) and includes affected counties.

Adopted December 6, 1995

Effective January 10, 1996

**§291.81. Customer Relations.**

(a) Information to customers.

(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §291.85 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's or customer's right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under §290.44(h) of this title (relating to Water Distribution) if such is required. The utility shall ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems that may be created if a backflow prevention assembly or device is installed.

(3) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff must be available at its local office for review by a customer or service applicant upon request.

(4) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) must be labeled to indicate the size, design capacity, and any pertinent information that will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and must be available for commission inspection during normal working hours.

(4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.

(e) Other Fees for Service Applicants. Except for an affected county, utilities shall not charge membership fees or application fees.

Adopted September 27, 2000

Effective October 19, 2000

**§291.87. Billing.**

(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date.

(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.



(d) **Deferred payment plan.** A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) **Rendering and form of bills.**

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage;

(O) the local telephone number or toll free number where the utility can be reached.

(3) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the Texas Water Code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.

(g) Consolidated billing and collection contracts.

(1) This subsection applies to all retail public utilities.

(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

- (A) describing the procedure by which the customer may make a contribution with the customer's bill payment;
- (B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;
- (C) informing the customer that a contribution is voluntary;
- (D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and
- (E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

- (A) the utility's expenses in administering the contribution program; or
- (B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

Adopted June 18, 2008

Effective July 10, 2008

**§291.88. Discontinuance of Service.**

(a) Disconnection with notice.

(1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:

- (A) the words "termination notice" or similar language approved by the executive director written in a way to stand out from other information on the notice;
- (B) the action required to avoid disconnection, such as paying past due service charges;

(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the executive director;

(D) the intended date of disconnection;

(E) the office hours, telephone number, and address of the utility's local office;

(F) the total past due charges;

(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.

(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:

(i) that failure to pay past due sewer charges will result in termination of water service; and

(ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.

(iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;

(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;

(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Applicant and Customer Deposit);

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and

(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.

(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:

(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;

(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.89 of this title (relating to Meters).

(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) failure to pay for utility service provided to a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for non-utility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.89 of this title;

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;

(7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;

(8) refusal of a current customer to sign a service agreement; or,

(9) failure to pay standby fees.

(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §291.114 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.

(e) Disconnection of water service due to nonpayment of sewer charges.

(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.

(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.

(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed \$50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.

(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:

Westlaw

V.T.C.A., Health &amp; Safety Code § 364. 013

Page 1

**C****Effective:[See Text Amendments]**

Vernon's Texas Statutes and Codes Annotated Currentness

**Health and Safety Code(Refs & Annos)**

Title 5. Sanitation and Environmental Quality (Refs &amp; Annos)

Subtitle B. Solid Waste, Toxic Chemicals, Sewage, Litter, and Water (Refs &amp; Annos)

▣ Chapter 364. County Solid Waste (Refs &amp; Annos)

▣ Subchapter B. County Solid Waste Management

→ § 364. 013. County Authority

A county may:

- (1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;
- (2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;
- (3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;
- (4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and
- (5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system.

**CREDIT(S)**

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

**HISTORICAL AND STATUTORY NOTES**

2001 Main Volume

**Prior Laws:**

Acts 1971, 62nd Leg., p. 1757, ch. 516.

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

Vernon's Ann.Civ.St. art. 4477-8, § 4.

RESEARCH REFERENCES

2009 Electronic Pocket Part Update

Encyclopedias

TX Jur. 3d Conservation & Pollution Laws § 132, Acquisition and Operation of Systems.

Treatises and Practice Aids

Brooks, 36 Tex. Prac. Series § 32.2, County Sanitary Landfill.

V. T. C. A., Health & Safety Code § 364. 013, TX HEALTH & S § 364. 013  
Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

(c) 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.



**C**

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs &amp; Annos)

Title 5. Sanitation and Environmental Quality (Refs &amp; Annos)

Subtitle B. Solid Waste, Toxic Chemicals, Sewage, Litter, and Water (Refs &amp; Annos)

☐ Chapter 364. County Solid Waste (Refs &amp; Annos)

☐ Subchapter C. Solid Waste Management Systems and Services Contracts

→ § 364.031. Public Agency Contracts

(a) A public agency may contract with another public agency or a private contractor for the other public agency or private contractor to:

(1) make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons; and

(2) furnish solid waste collection, transportation, handling, storage, or disposal services through the other public agency's or private contractor's system.

(b) The contract may:

(1) be for the duration agreed on by the parties;

(2) provide that the contract remains in effect until bonds issued or to be issued by either public agency and refunding bonds issued for those original bonds are paid;

(3) contain provisions to assure equitable treatment of parties who contract with the other public agency or private contractor for solid waste collection, transportation, handling, storage, or disposal services from the same solid waste disposal system;

(4) provide for the sale or lease to or use by the other public agency or private contractor of a solid waste disposal system owned or to be acquired by the public agency;

(5) provide that the other public agency or private contractor will operate a solid waste disposal system owned or to be acquired by the public agency;

(6) provide that the public agency is entitled to continued performance of services after the amortization of the other public agency's or private contractor's investment in the disposal system during the useful life of the system on payment of reasonable charges, reduced to take into consideration the amortization; and

(7) contain any other provisions and requirements the other public agency or private contractor and the public agency determine to be appropriate or necessary.

(c) The contract must provide the method to determine the amount the public agency will pay to the other public agency or private contractor.

(d) A municipality may provide in its contract that the other public agency or private contractor has the right to use the streets, alleys, and public ways and places in the municipality during the term of the contract.

(e) This section does not expand the authority granted to a county under Section 364.013.

#### CREDIT(S)

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 486, § 1, eff. June 12, 1995.

#### REVISOR'S NOTE

2001 Main Volume

The revised law substitutes the term "municipality" for "city" for the reason stated in Revisor's Note (3) under Section 364.003.

#### HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Section 2 of the 1995 amendatory act provides:

"A contract between a municipality and another public agency or private contractor entered into before the effective date of this Act in reliance on the authority of a municipality to contract for collection, transportation, handling, storage, or disposal of solid waste is validated to the extent of the authority of the municipality to so contract."

Prior Laws:

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

V.T.C.A., Health & Safety Code § 364.031

Page 3

Acts 1971, 62nd Leg., p. 1757, ch. 516.

Vernon's Ann.Civ.St. art. 4477-8, § 6.

#### LIBRARY REFERENCES

2001 Main Volume

Health and Environment ↪ 25.5(5).  
Westlaw Topic No. 199.

#### RESEARCH REFERENCES

2009 Electronic Pocket Part Update

Encyclopedias

TX Jur. 3d Conservation & Pollution Laws § 133, Contracts for Use of Facilities or Provision of Services.

V. T. C. A., Health & Safety Code § 364.031, TX HEALTH & S § 364.031

Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

(c) 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

**C**

Effective: June 15, 2007

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs &amp; Annos)

Title 5. Sanitation and Environmental Quality (Refs &amp; Annos)

Subtitle B. Solid Waste, Toxic Chemicals, Sewage, Litter, and Water (Refs &amp; Annos)

☐ Chapter 364. County Solid Waste (Refs &amp; Annos)

☐ Subchapter C. Solid Waste Management Systems and Services Contracts

→ § 364.034. Solid Waste Disposal Service; Fees

(a) A public agency or a county may:

- (1) offer solid waste disposal service to persons in its territory;
- (2) require the use of the service by those persons;
- (3) charge fees for the service; and
- (4) establish the service as a utility separate from other utilities in its territory.

(b) A fee for a service provided under this section may be collected by:

- (1) the county;
- (2) a private or public entity that contracts with the county to provide the service; or
- (3) another private or public entity that contracts with the county to collect the fees.

(c) A county may contract with a public or private utility to collect a fee for a service provided under this section. The contract may:

- (1) require the billing of the fee within the bill for other utility services;
- (2) allow a fee to be paid to the utility for billing and collecting the fee;

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

(3) require a system of accounting for fees collected by an entity other than the county; and

(4) contain other terms as agreed to by the parties.

(d) To aid enforcement of fee collection for the solid waste disposal service:

(1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid; and

(2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid.

(e) Except as provided by Subsections (f), (g), and (h), this section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a franchise it grants or a contract it enters into for solid waste collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are stopped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

## CREDIT(S)

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1238, § 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 271, § 2, eff. June 18, 2003; Acts 2007, 80th Leg., ch. 1394, § 1, eff. June 15, 2007.

## HISTORICAL AND STATUTORY NOTES

## 2001 Main Volume

## Prior Laws:

Acts 1971, 62nd Leg., p. 1757, ch. 516.

Vernon's Ann.Civ.St. art. 4477-8, § 13.

## RESEARCH REFERENCES

## 2009 Electronic Pocket Part Update

## Encyclopedias

TX Jur. 3d Conservation & Pollution Laws § 134, Solid Waste Disposal Service; Collection of Fees for Service.

## Forms

Texas Forms Legal and Business § 3B:8, The Texas Health and Safety Code.

## NOTES OF DECISIONS

Fees 1

Fines 2



Required use 4

Suspension of service 3


## 1. Fees

In view of importance of garbage and waste disposal, ordinance allowing city, which furnished water, sewerage, and garbage disposal services, to discontinue water service to premises when occupant fails to pay city garbage collection charge was not unconstitutional, but was a reasonable exercise of inherent police power of the city, and discontinuance of water by the city in accordance with ordinance did not constitute a taking of property without due process with respect to homeowner who had refused to pay garbage collection charge. City of Breckenridge v. Cozart (Civ.App. 1972) 478 S.W.2d 162, ref. n.r.e.. Constitutional Law ¶ 4372; Waters And Water Courses ¶ 201

## 2. Fines

Municipality may enforce payments for solid waste collection by imposition of fine, even though sole penalty provided for under County Solid Waste Control Act for failure to make payments is suspension of service; such fines fall within inherent police powers of city, and Legislature did not intend suspension of service to be only means by which county could enforce payments. *Grothues v. City of Helotes* (App. 4 Dist. 1996) 928 S.W.2d 725. Environmental Law  384; Municipal Corporations  633(1)

## 3. Suspension of service

Under County Solid Waste Control Act, public agency or county has no obligation to continue to provide garbage service to resident whose service account is in arrears, and suspension of service is available as encouragement to pay delinquent bill so that delivery of service may be restored. *Grothues v. City of Helotes* (App. 4 Dist. 1996) 928 S.W.2d 725. Environmental Law  368

## 4. Required use

The Pasadena Independent School District must comply with an ordinance of the City of Pasadena authorizing a single vendor to collect garbage within municipal limits, assuming that the ordinance is reasonable. Op. Atty. Gen. 1996, No. DM-401.

A home-rule municipality may adopt an ordinance requiring residential construction contractors to use the franchisee selected by the city for weekly residential and commercial garage removal to collect and haul customary debris from a construction site. Op. Atty. Gen. 1999, No. JC0035.

V. T. C. A., Health & Safety Code § 364.034, TX HEALTH & S § 364.034  
Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

(c) 2009 Thomson Reuters

END OF DOCUMENT

Westlaw.

V.T.C.A., Health &amp; Safety Code § 364.034

Page 1

*High lighted  
mark up for  
discussion***C**

Effective: June 15, 2007

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs &amp; Annos)

Title 5. Sanitation and Environmental Quality (Refs &amp; Annos)

Subtitle B. Solid Waste, Toxic Chemicals, Sewage, Litter, and Water (Refs &amp; Annos)

☐ Chapter 364. County Solid Waste (Refs &amp; Annos)

☐ Subchapter C. Solid Waste Management Systems and Services Contracts

→ § 364.034. Solid Waste Disposal Service; Fees

(a) A public agency or a county may:

- (1) offer solid waste disposal service to persons in its territory;
- (2) require the use of the service by those persons;
- (3) charge fees for the service; and
- (4) establish the service as a utility separate from other utilities in its territory.

(b) A fee for a service provided under this section may be collected by:

- (1) the county;
- (2) a private or public entity that contracts with the county to provide the service; or
- (3) another private or public entity that contracts with the county to collect the fees.

(c) A county may contract with a public or private utility to collect a fee for a service provided under this section. The contract may:

- (1) require the billing of the fee within the bill for other utility services;
- (2) allow a fee to be paid to the utility for billing and collecting the fee;

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.



(3) require a system of accounting for fees collected by an entity other than the county; and

(4) contain other terms as agreed to by the parties.

★ (d) To aid enforcement of fee collection for the solid waste disposal service;

(1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid; and

(2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid.

(e) Except as provided by Subsections (f), (g), and (h), this section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a franchise it grants or a contract it enters into for solid waste collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are stopped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

## CREDIT(S)

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1238, § 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 271, § 2, eff. June 18, 2003; Acts 2007, 80th Leg., ch. 1394, § 1, eff. June 15, 2007.

## HISTORICAL AND STATUTORY NOTES

## 2001 Main Volume

## Prior Laws:

Acts 1971, 62nd Leg., p. 1757, ch. 516.

Vernon's Ann.Civ.St. art. 4477-8, § 13.

## RESEARCH REFERENCES

## 2009 Electronic Pocket Part Update

## Encyclopedias

TX Jur. 3d Conservation & Pollution Laws § 134, Solid Waste Disposal Service; Collection of Fees for Service.

## Forms

Texas Forms Legal and Business § 3B:8, The Texas Health and Safety Code.

## NOTES OF DECISIONS

Fees 1

Fines 2

Required use 4

Suspension of service 3

## 1. Fees

In view of importance of garbage and waste disposal, ordinance allowing city, which furnished water, sewerage, and garbage disposal services, to discontinue water service to premises when occupant fails to pay city garbage collection charge was not unconstitutional, but was a reasonable exercise of inherent police power of the city, and discontinuance of water by the city in accordance with ordinance did not constitute a taking of property without due process with respect to homeowner who had refused to pay garbage collection charge. *City of Breckenridge v. Cozart* (Civ.App. 1972) 478 S.W.2d 162, ref. n.r.e.. Constitutional Law ↪ 4372; Waters And Water Courses ↪ 201

## 2. Fines

Municipality may enforce payments for solid waste collection by imposition of fine, even though sole penalty provided for under County Solid Waste Control Act for failure to make payments is suspension of service; such fines fall within inherent police powers of city, and Legislature did not intend suspension of service to be only means by which county could enforce payments. *Grothues v. City of Helotes* (App. 4 Dist. 1996) 928 S.W.2d 725. Environmental Law ⚡ 384; Municipal Corporations ⚡ 633(1)

## 3. Suspension of service

Under County Solid Waste Control Act, public agency or county has no obligation to continue to provide garbage service to resident whose service account is in arrears, and suspension of service is available as encouragement to pay delinquent bill so that delivery of service may be restored. *Grothues v. City of Helotes* (App. 4 Dist. 1996) 928 S.W.2d 725. Environmental Law ⚡ 368

## 4. Required use

The Pasadena Independent School District must comply with an ordinance of the City of Pasadena authorizing a single vendor to collect garbage within municipal limits, assuming that the ordinance is reasonable. Op. Atty. Gen. 1996, No. DM-401.

A home-rule municipality may adopt an ordinance requiring residential construction contractors to use the franchise selected by the city for weekly residential and commercial garage removal to collect and haul customary debris from a construction site. Op. Atty. Gen. 1999, No. JC0035.

V. T. C. A., Health & Safety Code § 364.034, TX HEALTH & S § 364.034  
Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

(c) 2009 Thomson Reuters

END OF DOCUMENT

Westlaw

V.T.C.A., Health &amp; Safety Code § 364.037

Page 1

**C**

Effective: April 1, 2009

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs &amp; Annos)

Title 5. Sanitation and Environmental Quality (Refs &amp; Annos)

Subtitle B. Solid Waste, Toxic Chemicals, Sewage, Litter, and Water (Refs &amp; Annos)

Chapter 364. County Solid Waste (Refs &amp; Annos)

Subchapter C. Solid Waste Management Systems and Services Contracts

→ § 364.037. Agreements With Other Political Subdivisions for Collection of Past Due Utility or Solid Waste Disposal Services Fees

(a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

- (1) another county or public agency that provides solid waste disposal services under this subchapter;
- (2) a municipality that operates a utility system, as defined by Section 552.001, Local Government Code; or
- (3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a county or public agency:

- (1) may refuse to provide solid waste disposal services to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or
- (2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the solid waste disposal services the person requests.

(c) The agreement shall provide for:

- (1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and
- (2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2)

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

.C.A., Health & Safety Code § 364.037

Page: 2

between the collecting entity and the entity to which the fees are owed.

CREDIT(S)

Added by Acts 2003, 78th Leg., ch. 271, § 3, eff. June 18, 2003. Amended by Acts 2007, 80th Leg., ch. 885, § 3.77(2), eff. April 1, 2009.

RESEARCH REFERENCES

2009 Electronic Pocket Part Update

Encyclopedias

TX Jur. 3d Conservation & Pollution Laws § 134, Solid Waste Disposal Service; Collection of Fees for Service.

V. T. C. A., Health & Safety Code § 364.037, TX HEALTH & S § 364.037  
Current through the end of the 2009 Regular and First Called Session of the 81st Legislature.

(c) 2009 Thomson Reuters

END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.