



Ohio Attorney General  
30 E. Broad St., 25th Fl.  
Columbus, OH 43215-3428

JAMES MATHEWS  
Amicus - National Solid Waste Management Association  
400 S. Main Street  
North Canton, OH 44720

*Gwin, P.J.*

{¶1} Defendants-appellants Republic Services of Ohio, II, LLC [Hereinafter “Republic”] and cross-appellant Christopher Jones, Director of the Ohio Environmental Protection Agency [Hereinafter “OEPA”] appeal the trial court’s granting of summary judgment in favor of the plaintiff- appellant Stark-Tuscarawas-Wayne Joint Solid Waste District [Hereinafter “District”].

{¶2} Defendant-appellant own and operate the Countywide Recycling Disposal Facility located in East Sparta, Stark County, Ohio. On June 2, 2003, the Director of the OEPA issued a lateral and vertical expansion permit-to-install to defendant-appellant Republic which authorizes them to increase the size and total capacity of the landfill. Pursuant to R.C. 3745.04 and/or R.C. 3745.07, the plaintiff-appellee District filed an appeal to the Ohio Environmental Review Appeals Commission [Hereinafter “ERAC”]. The District’s appeal alleges that the OEPA acted unlawfully and unreasonably in issuing the permit to Republic. Republic raised concerns about the District’s authority to file and fund the ERAC appeal.

{¶3} On November 14, 2003, the District filed a complaint for declaratory judgment in the Stark County Court of Common Pleas. The District petitioned the trial court for a declaration that the District had statutory authority to appeal a permit-to-install to the ERAC. The District also asked the trial court to declare that the District could expend funds, either fees collected pursuant to R.C. 3734.57 or interest accrued

on the those fees, in furtherance of an ERAC appeal. The District's complaint named Republic Services of Ohio, II LLC and Christopher Jones, Director of Environmental Protection as party defendants.

{¶4} The District and Republic submitted summary judgment motions to the trial court. The National Solid Waste Management Association filed an amicus brief in support of Republic's motion for summary judgment. In addition, the Director of the OEPA filed a brief for the trial court's consideration.

{¶5} After reviewing the parties' motions for summary judgment and the respective briefs, on March 9, 2004, the trial court issued a judgment entry declaring that the district has the authority to file an appeal to ERAC and could expend funds collected pursuant to R.C. 3734.57, as well as the interest accrued on those funds, in furtherance of such an appeal.

{¶6} Republic timely filed an appeal from the trial court's judgment entry. The OEPA has filed a cross-appeal from the March 9, 2004 judgment entry and the National Solid Wastes Management Association has filed an amicus brief in support of Republic's position. The issues presented by the parties are:

{¶7} "1. DOES APPELLEE STARK-TUSCARAWAS-WAYNE JOINT SOLID WASTE MANAGEMENT DISTRICT ("DISTRICT") HAVE AUTHORITY TO APPEAL TO THE OHIO ENVIRONMENTAL REVIEW APPEALS COMMISSION ("ERAC") FROM A DECISION OF THE DIRECTOR OF OHIO ENVIRONMENTAL PROTECTION AGENCY ("OHIO EPA") SUCH AS GRANTING REPUBLIC A PERMIT-TO-INSTALL TO MODIFY ITS COUNTYWIDE LANDFILL FACILITY WITHIN THE TERRITORY OF THE DISTRICT?

{¶8} “II. DOES THE DISTRICT HAVE AUTHORITY TO EXPEND R.C. 3734.57 WASTE DISPOSAL FEES IN FURTHERANCE OF SUCH AN APPEAL?

{¶9} “III. DOES THE DISTRICT HAVE AUTHORITY TO EXPEND MONIES FROM ITS GENERAL FUND IN FURTHERANCE OF SUCH AN APPEAL?”

I.

{¶10} Although appellants present only one assignment of error, appellants raise three issues with respect to the trial court’s granting of summary judgment in favor of appellee. Accordingly, we will treat each issue as a separate assignment of error for purposes of our review.

{¶11} The question we must answer is whether a declaratory judgment action was proper in this case. Three elements are necessary to obtain declaratory judgment as an alternate to other remedies: (1) a real controversy must exist between adverse parties; (2) which is justifiable in nature; and (3) speedy relief is necessary to the preservation of rights that may otherwise be impaired or lost. *Fairview Gen. Hosp. v. Fletcher* (1992), 63 Ohio St.3d 146, 148-149, 586 N.E.2d 80, 82-83.

{¶12} The granting of declaratory judgment and injunctive relief are matters of judicial discretion. *Control Data Corp. v. Controlling Bd. of Ohio* (1983), 16 Ohio App.3d 30, 35, 16 OBR 32, 36-38, 474 N.E.2d 336, 341- 342. A trial court's judgment cannot be disturbed on appeal absent a showing that the trial court abused its discretion. *Id.* See, also, *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 482, 450 N.E.2d 1140, 1141- 1142. The term abuse of discretion connotes more than an

error of judgment, "it implies that the court's attitude was unreasonable, arbitrary or unconscionable." Id.

{¶13} In the case at bar, the Court first found that the appellee, Stark-Tuscarawas-Wayne Joint Solid Waste District [Hereinafter "District"] had standing to appeal to the Ohio Environmental Review Appeals Commission [Hereinafter "ERAC"] a decision of the director of the Ohio Environmental Protection Agency [Hereinafter "OEPA"] granting a permit to install [Hereinafter "PTI"] allowing expansion of Appellant's, Republic Services of Ohio, LLC, [Hereinafter "Republic"] landfill which is located within the District's boundaries. Finding no error we affirm the trial court's decision on this issue.

{¶14} We begin with an analysis of the genesis and operation of a joint solid waste district.

{¶15} Provisions governing the formation and operation of solid waste management districts appear at R.C. 343.01-.08 and R.C. 3734.50-.57. Pursuant to R.C. 3734.52, the board of commissioners of each county must either establish and maintain a county solid waste management district or participate with other counties in establishing and maintaining a joint solid waste management district. A county solid waste management district is managed by the board of commissioners of the county, and a joint solid waste management district is managed by its board of directors, consisting generally of the boards of county commissioners of the counties within the district. Each county or joint solid waste management district has a solid waste management policy committee, consisting of representatives of the public and of

various political subdivisions within the district. See, Ohio Op. Att'y Gen. No. 92-03(Sept. 3, 1993).

{¶16} “ R.C. 343.01(A) vests in the board of county commissioners responsibility for the general management of a county solid waste management district, and implementation of the district solid waste management plan that is prepared in accordance with the terms of R.C. 3734.53-.56. In the case of a joint solid waste management district, such responsibility rests, pursuant to R.C. 343.01(B), with the boards of county commissioners of the counties that establish the joint district, which constitute, collectively, the board of directors of the joint solid waste management district. R.C. 343.01(B) thus states that the initial agreement to establish and maintain a joint solid waste management district ‘shall be ratified by resolution of the board of county commissioners of each participating county,’ and that ‘[u]pon ratification, the board of directors shall take control of and manage the joint district subject to [R.C. Chapter 343].’ R.C. 343.01(C)-(G) further delineate additional duties, powers, and responsibilities variously conferred upon the governing board of a county solid waste management district and the board of directors of a joint solid waste management district. See, e.g., R.C. 343.01(C) (a joint solid waste management district board of directors may acquire, by purchase or lease, construct, improve, enlarge, replace, maintain, and operate such solid waste collection systems within the district and such solid waste transfer, disposal, recycling, or resource recovery facilities within or outside the district as are necessary for the protection of the public health); R.C. 343.01(D) (a joint solid waste management district board of directors may employ financial advisers and any other professional services it considers necessary to assist it in the

construction, financing, and maintenance of solid waste collection, transfer, disposal, recycling, or resource recovery facilities); R.C. 343.01(E) [current version R.C. 343.01(F)] (a joint solid waste management district board of directors may issue bonds or bond anticipation notes to pay the cost of preparing general and detailed plans and other data required for the construction of solid waste transfer, disposal, recycling, or resource recovery facilities in connection with the district); R.C. 343.01(F)[current version R.C. 343.01(G)] (rule-adopting and enforcement authority of a joint solid waste management district board of directors); R.C. 343.01(G)[current version R.C. 343.01(H)] (a joint solid waste management district board of directors may enter into a contract with any person, municipal corporation, township, or other political subdivision for the operation and maintenance of any solid waste disposal, recycling, or resource recovery facilities).” Id.

{¶17} “[A] joint solid waste management district is an autonomous legal entity distinguishable from the individual counties that, pursuant to R.C. 343.01(A) (2) and R.C. 3734.52(A) and (B), participate in its creation.” Id.

{¶18} As can be extrapolated from the above, the District is not simply limited to preparing a “plan” and providing for, demonstrating and certifying the availability of and sufficient access to sufficient solid waste capacity to meet a district’s management needs. The arguments advanced by Republic and the *amicus* have been rejected by the courts.

{¶19} In *Clark County Solid Waste Mgmt. District v. Danis Clarco Landfill Co.* (1996), 109 Ohio App.3d 19, 671 N.E.2d 1034, the Court of appeals for the Second District noted:

{¶20} “R.C. 3734.53(C) (2) provides:

{¶21} ‘The solid waste management plan of a county or joint district may provide for the adoption of rules under division (G) of section 343.01 of the Revised Code after approval of the plan under section 3734.55 of the Revised Code:

{¶22} ‘ \* \* \*

{¶23} ‘(2) Governing the maintenance, protection, and use of solid waste collection and solid waste disposal, transfer, recycling, and resource recovery facilities within the district and requiring the submission of general plans and specifications for the construction, enlargement, or modification of any such facility to the board of county commissioners or board of directors of the district for review and approval as complying with the plan or amended plan of the district [.]’ (Emphasis added.)

{¶24} “Additionally, R.C. 343.01(G) (2) states:

{¶25} ‘To the extent authorized by the solid waste management plan of the district \* \* \*, the board of county commissioners of a county district or board of directors of a joint district may adopt, publish, and enforce rules:

{¶26} ‘ \* \* \*

{¶27} ‘(2) Governing the maintenance, protection, and use of solid waste collection or other solid waste facilities located within its district. The rules adopted under division (G) (2) of this section shall not establish design standards for solid waste facilities and shall be consistent with the solid waste provisions of Chapter 3734. of the Revised Code and the rules adopted under those provisions. The rules adopted under division (G) (2) of this section may prohibit any person, municipal corporation, township, or other political subdivision from constructing, enlarging, or modifying any solid waste

facility until general plans and specifications for the proposed improvement have been submitted to and approved by the board of county commissioners or board of directors as complying with the solid waste management plan or amended plan of the district' (Emphasis added.)

{¶28} “An analysis of R.C. 3734.53(C)(2) reveals that it grants county districts the authority to adopt rules requiring the submission of plans for the construction of *any* solid waste disposal facility. Furthermore, the plans submitted must demonstrate compliance with the district's solid waste management plan. Similarly, R.C. 343.01(G)(2) allows a county district to adopt and enforce rules prohibiting *any* person from constructing *any* solid waste disposal facility until general plans have been submitted demonstrating compliance with the district's solid waste management plan. The plain language of these statutes authorizes a county solid waste management district to subject *all* proposed facilities to the county's ten-year plan.” *Id.* at 109 Ohio App.3d at 25-26; 671 N.E.2d at 1038-39. See, also, *North Sanitary Landfill v. Bd. of County Commissioners*(1976), 52 Ohio App.2d 167, 369 N.E.2d 17 (holding that statutory language, similar to that contained in Section 343.01(G)(2), gives discretion to a solid waste district either to allow or to disallow the construction of a landfill in its territory).

{¶29} “The primary purpose of R.C. 3734.53(A) *is* assuring the long-term availability of solid waste disposal facilities. Indeed, the provision states that district plans *shall* address such concerns. However, R.C. 3734.53(C) states that district plans *may* address other concerns. Specifically, R.C. 3734.53(C) (2) grants districts rulemaking authority to govern the maintenance, protection, and use of solid waste

facilities. The provision also allows districts to oversee the construction, enlargement, or modification of any facility. This diverse rulemaking authority is consistent with R.C. 3734.52, which places all county territory 'under the jurisdiction of the county or joint solid waste management district for the purposes of preparing, adopting, submitting, and implementing the solid waste management plan for the county or joint district *and* for the purposes of providing for, or causing to be provided for, the safe and sanitary management of solid wastes \* \* \*.' (Emphasis added.)

{¶30} "The location of a proposed landfill identified or not, certainly is a matter of local District concern..." *Clark County Solid Waste Mgmt. District v. Danis Clarco Landfill Co., supra, 109 Ohio App.3d at 27- 28, 671 N.E.2d at 1040.*

{¶31} Taking appellants' argument to its logical extreme, "the District staff would be relegated to rubber-stamping those plans meeting OEPA design standards and rejecting those failing OEPA design standards. This redundant exercise would serve no purpose, and it clearly was not contemplated by the plan's drafters." *Id.* at 34, 671 N.E.2d at 1044.

{¶32} At issue here is whether the District can appeal the OEPA decision to the ERAC. At the appellate level, the term "standing" is more commonly referred to as a litigant's "right to appeal." As applied to the facts of this case, R.C. 3745.04 provides:

{¶33} "Any person who was a party to a proceeding before the director may participate in an appeal to the environmental board of review for an order vacating or modifying the action of the director of environmental protection or local board of health, or ordering the director or board of health to perform an act. \* \* \* "

{¶34} “[B]asic to the establishment of standing is that the challenged action has caused, or will cause, the appellant injury in fact, economic or otherwise, and that the interest sought to be protected is within the realm of interests regulated or protected by the statute or constitutional right being challenged. See *Assn. of Data Processing Serv. Org., Inc. v. Camp* (1970), 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184; *State ex rel. Dayton Newspapers v. Phillips* (1976), 46 Ohio St.2d 457, 75 O.O.2d 511, 351 N.E.2d 127; and *State v. Keene* (1986), 33 Ohio App.3d 116, 514 N.E.2d 747.” *Franklin County Regional Solid Waste Mgmt. Auth. V. Schregardus* (1992), 84 Ohio App.3d 591, 599, 617 N.E.2d 761, 767.

{¶35} “A ‘party’ for purposes of EBR review under R.C. 3745.04 was further defined in *Cincinnati Gas & Electric Co. v. Whitman* (App.1974), 11 O.O.3d 192, 198, as ‘any person affected by the proposed action who appears in person, or by his attorney, and presents his position, arguments, or contentions orally or in writing, or who offers or examines witnesses or presents evidence tending to show that said proposed rule, amendment or rescission, if adopted or effectuated, will be unreasonable or unlawful[,]’ \* \* \* [or] \* \* \* a person who appears in person, or by his attorney, and presents his position, arguments or contentions as to the lawfulness and reasonableness of such proposed rule, amendment or rescission.” *New Boston Coke Corp. v. Tyler* (1987), 32 Ohio St.3d 216, 218, 513 N.E.2d 302, 305.

{¶36} Thus, pursuant to R.C. 3745.04, as a party to the proceeding before the director, appellant is given statutory authority to participate in an appeal to the ERAC. *Franklin County Regional Solid Waste Mgmt. Auth. V. Schregardus*, supra, 84 Ohio App.3d at 599, 617 N.E.2d at 767. Thus, appellant has met the threshold requirements

for invoking the jurisdiction of the ERAC, since it has a statutory right to appeal pursuant to R.C. 3745.04 and has asserted grounds which allege a threat of injury to the District. *Id.* at 599-600, 617 N.E.2d 767.

{¶37} The trial court did not abuse its discretion in finding that the District has standing to appeal a decision of the director of the OEPA granting a PTI allowing expansion of Republic's landfill which is located within the District's boundaries.

{¶38} Appellant's first assignment of error is overruled.

## II. & III.

{¶39} The second issue on which the Appellants claim the trial court erred in granting summary judgment to the District is whether the District may expend District funds to further an appeal to the ERAC. Specifically in appellants' second assignment of error can the District utilize R.C. 3734.57 funds, and with respect to the third assignment of error, may the District utilize its general fund to retain and employ counsel. We will address these issues together.

{¶40} In its opinion, the trial court found "that the District may retain and pay counsel from either the special fund (waste fees collected) or general fund (interest on waste fees collected), provided the general fund meets the proper criteria."

{¶41} A joint solid waste management district board of directors must perform a variety of statutory duties and functions that may very well require that the board consult with, or seek the assistance of, legal counsel. See, e.g., R.C. 343.01(B)-(G); R.C. 343.02 (contracts for services; agreements for joint use of solid waste management facilities); R.C. 343.07(C) (bond issuing authority). In such circumstances one may reasonably infer authority on the part of the joint solid waste management district board

of directors to hire legal counsel who will provide the board of directors with the advice and assistance it requires. It is a general rule that public officials have both such powers as are expressly conferred by statute and such powers as may be reasonably and necessarily inferred from the statutory powers. See *State ex rel. Finley v. Lodwich*, 137 Ohio St. 329, 29 N.E.2d 959 (1940). See, also Ohio Op. Att’y Gen. No. 89-102(Dec. 29, 1989).

{¶42} R.C. 343.019E)(2), provides, in relevant part: “[i]nstead of designating the prosecuting attorney of one of the counties forming the district to be the legal advisor of the district, the board of directors may employ on an annual basis an attorney or other legal counsel to serve as the district’s legal advisor...” See also, R.C. 343.011(D).

{¶43} Accordingly, the District may hire legal counsel. The question now becomes how the District pays for legal counsel.

{¶44} R.C. 343.01(B) (2) provides, in relevant part: “The fiscal officer of a district shall establish a general fund and any other necessary funds for the district.”

{¶45} Moneys paid to a joint district pursuant to R.C. 3734.57(G) come from various sources and may be used for various purposes. Two of the major sources are the tiered disposal fee, authorized by R.C. 3734.57(B), and the generation fee, authorized by R.C. 3734.573(A). R.C. 3734.57(G) requires that moneys in the special fund arising from the tiered disposal fee and the generation fee be expended in accordance with the district’s solid waste management plan exclusively for the purposes listed in R.C. 3734.57(G)(1)- (10). See, Ohio Op. Att’y Gen. No.97-043(Sept. 18, 1997). Those purposes are:

{¶46} “(1) Preparation of the solid waste management plan of the district under section 3734.54 of the Revised Code, monitoring implementation of the plan, and conducting the periodic review and amendment of the plan required by section 3734.56 of the Revised Code by the solid waste management policy committee;

{¶47} “(2) Implementation of the approved solid waste management plan or amended plan of the district, including, without limitation, the development and implementation of solid waste recycling or reduction programs;

{¶48} “(3) Providing financial assistance to boards of health within the district, if solid waste facilities are located within the district, for enforcement of this chapter and rules, orders, and terms and conditions of permits, licenses, and variances adopted or issued under it, other than the hazardous waste provisions of this chapter and rules adopted and orders and terms and conditions of permits issued under those provisions;

{¶49} “(4) Providing financial assistance to each county within the district to defray the added costs of maintaining roads and other public facilities and of providing emergency and other public services resulting from the location and operation of a solid waste facility within the county under the district's approved solid waste management plan or amended plan;

{¶50} “(5) Pursuant to contracts entered into with boards of health within the district, if solid waste facilities contained in the district's approved plan or amended plan are located within the district, for paying the costs incurred by those boards of health for collecting and analyzing samples from public or private water wells on lands adjacent to those facilities;

{¶51} “(6) Developing and implementing a program for the inspection of solid wastes generated outside the boundaries of this state that are disposed of at solid waste facilities included in the district's approved solid waste management plan or amended plan;

{¶52} “(7) Providing financial assistance to boards of health within the district for the enforcement of section 3734.03 of the Revised Code or to local law enforcement agencies having jurisdiction within the district for enforcing anti-littering laws and ordinances;

{¶53} “(8) Providing financial assistance to boards of health of health districts within the district that are on the approved list under section 3734.08 of the Revised Code to defray the costs to the health districts for the participation of their employees responsible for enforcement of the solid waste provisions of this chapter and rules adopted and orders and terms and conditions of permits, licenses, and variances issued under those provisions in the training and certification program as required by rules adopted under division (L) of section 3734.02 of the Revised Code;

{¶54} “(9) Providing financial assistance to individual municipal corporations and townships within the district to defray their added costs of maintaining roads and other public facilities and of providing emergency and other public services resulting from the location and operation within their boundaries of a composting, energy or resource recovery, incineration, or recycling facility that either is owned by the district or is furnishing solid waste management facility or recycling services to the district pursuant to a contract or agreement with the board of county commissioners or directors of the district;

{¶55} “(10) Payment of any expenses that are agreed to, awarded, or ordered to be paid under section 3734.35 of the Revised Code and of any administrative costs incurred pursuant to that section. In the case of a joint solid waste management district, if the board of county commissioners of one of the counties in the district is negotiating on behalf of affected communities, as defined in that section, in that county, the board shall obtain the approval of the board of directors of the district in order to expend moneys for administrative costs incurred.”

{¶56} The exclusivity of the R.C. 3734.57(G) funds is echoed in R.C. 3734.53(B) (3), County and Joint Solid Waste District Management plans:

{¶57} “(B) In addition to the information, projections, demonstrations, and certification required by division (A) of this section, a plan shall do all of the following:

{¶58} “(3) Contain provisions governing the allocation among the purposes enumerated in divisions (G) (1) to (10) of section 3734.57 of the Revised Code of the moneys credited to the special fund of the district under division (G) of that section that are available for expenditure by the district under that division. The plan shall do all of the following:

{¶59} “(b) Contain provisions governing the allocation and distribution of moneys credited to and available from the special fund of the district to health districts within the county or joint district that have approved programs under section 3734.08 of the Revised Code for the purposes of division (G)(3) of section 3734.57 of the Revised Code;

{¶60} “(c) Contain provisions governing the allocation and distribution of moneys credited to and available from the special fund of the district to the county in which solid

waste facilities are or are to be located and operated under the plan for the purposes of division (G)(4) of section 3734.57 of the Revised Code;

{¶61} “(d) Contain provisions governing the allocation and distribution, pursuant to contracts entered into for that purpose, of moneys credited to and available from the special fund of the district to boards of health within the district in which solid waste facilities contained in the district's plan are located for the purposes of division (G)(5) of section 3734.57 of the Revised Code...”

{¶62} Further R.C. 3734.574 Procedures regarding fees; proposed budgets

{¶63} states:

{¶64} “[t]he director may disapprove in whole or in part such a proposed quarterly budget for any of the following reasons:

{¶65} “(1) The proposed budget includes expenditures for any purpose other than those authorized under divisions (G)(1) to (10) of section 3734.57 of the Revised Code...”

{¶66} It is clear that the R.C. 3734.57(G) funds are to be used for no other purpose than those enumerated by R.C. 3734.57(G) (1)-(10). Compensation for legal counsel is not one of the enumerated purposes of the fund. To the extent that the trial court ruled that the special funds, i.e. waste fees collected, can be used to retain and pay counsel we reverse the decision of the trial court.

{¶67} However, the trial court correctly ruled that the District can use the interest generated on those funds to retain and pay counsel.

{¶68} “When the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), appoints an individual who is not a county

auditor or a county treasurer to serve as the treasurer and fiscal officer of the joint district, that individual holds money of the joint district outside the county treasury and, pursuant to R.C. 135.21, interest earned on the money should be credited to the general fund of the joint district, to be used for any proper purpose of the joint district. Those purposes include the acquisition, construction, maintenance and operation of solid waste facilities, the compensation of employees, the management of the district, the execution of various contractual arrangements, and the purposes set forth in R.C. 3734.57 (G)(1)-(10). See R.C. 343.01, .02, .022, .04, .08; R.C. 3734.57(G) (1)-(10); see also R.C. 3734.52-.575. Thus, when money received by a joint solid waste management district under R.C. 3734.57(G) is held outside the county treasury and interest is credited to the joint district, the board of directors of the joint district may spend the interest for any statutory purpose of the joint district, including projects or contracts that may benefit the joint district's member counties. See, e.g., R.C. 343.01; R.C. 3734.57(G) (4).” Ohio Op. Att’y Gen. No. 97-043(Sept. 18, 1997).

{¶69} Accordingly, the District is entitled to utilize the interest on the R.C. 3754.57 funds, provided it meets the above criteria, to retain and pay counsel to pursue the appeal of the director’s decision to ERAC.

{¶70} The District is further entitled to expend monies from its general fund for this purpose.

{¶71} R.C. 343.08 provides, in relevant part:

{¶72} “All moneys collected by or on behalf of a county or joint district as rates or charges for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery service in any district shall be paid to the county treasurer in a county

district or to the county treasurer or other official designated by the board of directors in a joint district and kept in a separate and distinct fund to the credit of the district. The fund shall be used for the payment of the cost of the management, maintenance, and operation of the solid waste collection or other solid waste facilities of the district and, if applicable, the payment of the cost of collecting the rates or charges of the district pursuant to division (A) (1) or (2) of this section...

{¶73} “Those uses may include, in accordance with a cost allocation plan adopted under division (B) of this section, the payment of all allowable direct and indirect costs of the district, the sanitary engineer or sanitary engineering department, or a federal or state grant program, incurred for the purposes of this chapter and sections 3734.52 to 3734.572 of the Revised Code. Any surplus remaining after those uses of the fund may be used for the enlargement, modification, or replacement of such facilities and for the payment of the interest and principal on bonds and bond anticipation notes issued pursuant to section 343.07 of the Revised Code. In no case shall money so collected be expended otherwise than for the use and benefit of the district.”

{¶74} Thus, R.C. 343.08 encompasses a different range of moneys than those covered by R.C. 3734.57(G) and contains different provisions governing the use of the moneys. The parties have not informed this court as to whether a county auditor or a third party is the financial officer of the District. To be entitled to utilize the funds, the District must meet the criteria set forth in the above opinion.

{¶75} Accordingly, appellants’ assignments of error two and three are sustained in part and overruled in part. Specifically, the District may not use R.C. 3734.57 funds

to pursue an appeal to ERAC; however the District may utilize its general fund, including interest earned on the R.C. 3754.57 funds, to pursue an appeal to ERAC a decision of the OEPA granting a PTI allowing expansion of Republic's landfill which is located within the District's boundaries provided it meets the above criteria.

{¶76} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed in part and reversed in part.

By Gwin, P.J.,

Wise, J., and

Boggins, J., concur

---

---

---

JUDGES

