



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 2, 1977

ATTORNEY GENERAL OPINION NO. 77- 74

Mr. William J. Daley
Labette County Attorney
45-E Box 991
Parsons, Kansas 67357

Re: Counties--Solid Waste--Permits

Synopsis: A city which did not elect to be excluded from the county plan in 1974, and which did not submit a separate solid waste management plan to the Secretary of Health and Environment for approval in 1974, has no authority to establish a solid waste disposal area which does not conform to the county plan, and no permit may be issued for such a facility by the Secretary so long as said disposal area is proposed to be operated by a city or cities in disregard of the county plan in which such cities are included.

* * *

Dear Mr. Daley:

You advise that in the development of the Labette County solid waste plan, the cities of Altamont, Edna, Mound Valley and Bartlett did not take any steps to exclude themselves therefrom, and thus were included in that plan. However, these cities are now in the process of developing a common sanitary landfill site which is not a part of and does not conform to the county plan.

K.S.A. 1976 Supp. 65-3405 provides for the establishment, adoption and implementation of solid waste management plans. Concerning counties such as Labette, it states in pertinent part thus:

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"On or before June 30, 1974, each county with a population of from fifteen thousand (15,000) to thirty thousand (30,000) and each city located therein which elects pursuant to subsection (b) of this section to exclude such city from the county plan shall submit to the secretary a workable plan for the management of solid waste within such county or city. . . . The plan developed by each county or city shall be adopted by the governing body of such county or city and shall be amended from time to time as changing conditions occur by the filing of revisions to said plan with the secretary."

You advise that prior to June 30, 1974, the cities identified above took no action to adopt separate solid waste management programs, and were included in the county plan. It is far too late for these cities to develop and submit to the Secretary of Health and Environment separate city solid waste management plans. Any such plan must have been approved in 1974, and have been implemented by June 30, 1976. Because these cities did not elect to exclude themselves from the county plan, they are subject to its provisions. K.S.A. 1976 Supp. 65-3405(b) states thus:

"The solid waste management plan submitted by each county shall provide for a solid waste management system plan to serve the residents of all townships and cities within the county or counties except for those cities which elect to be excluded from the county plan by resolution adopted by the city governing body thereof. . . ."

Because no timely resolutions were adopted by any of these cities, the governing bodies of these communities may not exercise their local municipal legislative or administrative powers at this date to except themselves from the county plan, or to establish a solid waste management system, including a solid waste disposal area, which does not conform to and is not part of the county plan.

The county solid waste management plan is obviously the central feature of the 1970 legislation. It is in the formation of local plans that counties and cities are to establish their respective

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responsibilities toward solid waste management, whether they be joint or separate. When a city takes no steps to except itself from the county plan, and to submit its separate plan to the Secretary of Health and Environment for its approval, that city ceases to become a separate entity in the planning and provision of solid waste management services, for it has submitted to the jurisdiction of the county. The successful implementation of any county plan necessarily depends in important part upon the participation of all those users who were considered in the formulation and adoption of the county plan. There is no provision in the 1970 act, as amended, which remotely suggests that a city does not elect to exclude itself from the county plan by June 30, 1974, is free thereafter to formulate its independent plan for submission to the Secretary of Health and Environment, or to establish operating facilities and services independently of the services and facilities which are developed under the auspices of and in conformity with the county plan.

K.S.A. 1976 Supp. 65-3407(a) states thus:

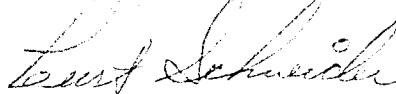
"After June 30, 1976, in all counties of the state, it shall be unlawful for any person to operate a solid waste processing facility or a solid waste disposal area of a solid waste management system without first obtaining a permit from the secretary."

Once the Secretary has approved a county solid waste management plan, as in the instance of Labette County, he is required to assure that no permit is issued for any facility or disposal area which does not conform to the county solid waste management plan or any amendments thereto which have been approved by him. Every applicant for a permit is required to submit to the Secretary "such information as necessary to show that the facility or service will comply with the purpose of this act." The fact that a proposed facility for which a permit is sought is to be operated by a city in disregard of the county plan to which the city submitted itself in 1974, clearly demonstrates, in my judgment, that the facility would not "comply with the purpose of this act," for it would destroy or jeopardize the integrity of the county plan and its successful implementation. Clearly, the use of county plans as a basis for planning and introduction of solid waste services is a central feature of the act, and in my opinion, the Secretary has no authority to issue any permit for the operation of a solid waste disposal area which does not conform to the terms and provisions of the solid waste management plan of the county in which the facility is to be located.

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In summary, it is my judgment that having submitted to the county solid waste management plan in 1974 by failing or neglecting to exclude themselves from it and by not having submitted separate and independent plans to the Secretary by June 30, 1974, deadline, the cities in question have no authority to proceed independently of the county plan, and to establish any facility or service which is not in conformity with the plan as approved, or as amended and approved. Moreover, the Secretary has no authority to authorize the issuance of a permit for any facility which is proposed to be operated by a city in disregard of the county solid waste management system, when the city which proposes to operate the facility did not elect to be excluded from the county plan, and the operation of the facility would not conform to the plan as approved by the Secretary in 1974, or with the plan as amended and approved since that time.

Yours very truly,



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