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ATTORNEY GENERAL OPINION NO. 90- 114

The Honorable Phil Martin
State Senator, 13th District
403 W. Euclid
Pittsburg, Kansas 66762

Re: Public Health -- Solid and Hazardous Waste; Solid
Wastes -- Solid Waste Processing Facility; Transfer
Station Permit Procedure

Synopsis: County certification that a proposed transfer
station is consistent with the county's solid waste
management plan is required if the plan includes
provision for transfer stations. Cited herein:
K.S.A. 65-3402; 65-3405; 65-3406; 65-3407.

* * *

Dear Senator Martin:

As State Senator for the Thirteenth District, you request our opinion regarding the necessity of county certification in the permit process of a solid waste transfer station. Specifically, you ask whether a completed application for a solid waste transfer station must include certification from the board of county commissioners that a proposed transfer station is consistent with the official county plan for the management of solid waste in such county.

Pursuant to K.S.A. 65-3405, each county is required to organize a solid waste management committee which is then required to submit to the secretary of health and environment a workable plan for the management of solid wastes within such

county. Further, that plan is required to be adopted by the governing body of such county. A "solid waste management system" means the entire process of storage, collection, transportation, processing and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof. K.S.A. 65-3402(b). The requirements of the solid waste management plan are set forth in K.S.A. 65-3405(c).

The secretary of health and environment is authorized to issue a permit for the operation of a solid waste processing facility or a solid waste disposal area of a solid waste management system, and it is unlawful for any person to operate such a facility without first obtaining a permit from the secretary. K.S.A. 65-3406(i), K.S.A. 65-3407(a). To obtain a permit to operate a solid waste processing facility or a solid waste disposal area, an application is made to the secretary of health and environment. K.S.A. 65-3407(a).

In Attorney General No. 90-67 we concluded that the secretary of health and environment had the authority to issue a solid waste disposal facility permit upon receiving and approving a completed application from the proposed permittee. We noted, however, that the completed application must include certification from the board of county commissioners that the proposed facility was consistent with the official county solid waste management plan. While Attorney General Opinion No. 90-67 specifically addressed the permit application requirements for a solid waste disposal facility, the same requirements are applicable to a solid waste processing facility. K.S.A. 65-3407.

A transfer station is one type of a solid waste processing facility [K.S.A. 65-3402(c)] and is defined in K.A.R. 28-29-3(ff) as:

"Any facility where solid wastes are transferred from one (1) vehicle to another or where solid wastes are stored and consolidated before being transported elsewhere. . . ."

By statutory definition the county's solid waste management system should include, among other activities relating to solid wastes, the processing of solid wastes which includes the operation of a transfer station. K.A.R. 28-26-6(e) defines the requisite relationship between the secretary of the Kansas department of health and environment, the board of county

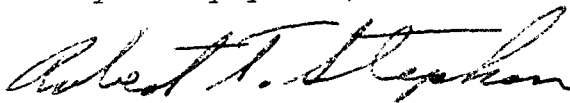
commissioners and the applicant vis-a-vis a requested solid waste processing permit as follows:

"Conformity with official plan. Permits shall not be issued by the secretary until the applicant has secured, from the board of county commissioners . . . certification that the proposed facility is consistent with the official plan. This approval shall not be required when the official plan does not provide for the management of solid waste(s) to be processed or disposed." (Emphasis added).

Since K.S.A. 65-3402(b) requires that a solid waste management system provide for the processing and disposal of solid wastes, it is difficult to imagine when the final proviso of K.A.R. 28-29-6(e) would become operational.

Assuming the county's waste management plan does include provision for transfer stations (as a type of processing facility) as required, county certification that the proposed transfer station is consistent with the plan is required. K.A.R. 28-29-6(e). However, this approval would not be required if the official plan does not provide for management of solid wastes to be processed by way of a transfer station. K.A.R. 28-29-6(e). Therefore, if the county's waste management plan does not include provision for transfer stations, county certification of the proposed transfer station is not required.

Very truly yours,



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Camille Nohe
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