The Honorable Phil Martin  
State Senator, 13th District  
403 W. Euclid  
Pittsburgh, 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,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Camille Nohe
Assistant Attorney General