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July 5, 1979

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ATTORNEY GENERAL OPINION NO. 79- 132

Mr. Robert M. Corbett
Attorney
State Department of Health
and Environment
Building 740, Forbes Field
Topeka, Kansas 66620

Re: Public Health--Solid Waste--Collection of Fees
Pursuant to K.A.R. 28-29-62

Synopsis: K.A.R. 28-29-62 is not beyond the statutory authority pursuant to which it is promulgated and is sufficient to allow the State Department of Health and Environment to compel compliance with its requirements.

* * *

Dear Mr. Corbett:

You request our opinion as to whether K.A.R. 28-29-62 exceeds the grant of statutory authority pursuant to which said regulation was promulgated. You explain that the authority under which said regulation was adopted is K.S.A. 1978 Supp. 65-3406. Said statute provides, in part, that the Secretary of Health and Environment is authorized to:

"(n) Adopt rules and regulations establishing a schedule of fees, to be paid to the secretary by permittees operating hazardous waste processing facilities or areas, sufficient, but not exceeding the amount necessary, to reimburse the state for the costs of monitoring such facilities and areas during and after operation of such facilities or areas."
(Emphasis added.)

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K.A.R. 28-29-62, however, imposes a fee on the permittee of a "hazardous waste processing or disposal facility area." (Emphasis added.)

K.S.A. 1978 Supp. 65-3406 is part of an act concerning the storage, disposal and processing of "solid wastes" and "hazardous wastes," both of which terms are statutorily defined in subsections (a) and (i), respectively, of K.S.A. 1978 Supp. 65-3402. As stated in K.S.A. 65-3401, this act was enacted for the "protection of the health and welfare of the citizen of Kansas" and to:

"(a) Establish and maintain a cooperative state and local program of planning and technical and financial assistance for comprehensive solid waste management.

. . . .

"(c) Require a permit for the operation of solid waste processing and disposal systems."

We also note that K.S.A. 65-3401 makes it clear that the act is intended as remedial legislation; enacted because of the express finding of the legislature "that the lack of adequate state regulation and control of solid waste and solid waste management systems has resulted in undesirable and inadequate solid waste management practices." Being remedial in nature, the provisions of this act are to be liberally construed. Wheeler v. Wheeler, 196 Kan. 697 (1966); Johnson v. Killion, 178 Kan. 154 (1955); and Van Doren v. Etchen, 112 Kan. 380 (1922).

It is within this context we consider your concern that, since K.S.A. 1978 Supp. 65-3406 does not specifically mention hazardous waste storage areas or hazardous waste disposal areas, the Secretary of Health and Environment is not authorized to establish a schedule of fees to be paid by persons who hold permits only for the operation of hazardous waste storage areas or hazardous waste disposal areas. In our judgment this statute should not be given this narrow construction.

Initially, it should be noted that the terms employed within the act are precisely defined. Of particular relevance to your inquiry are the definitions contained in subsections (j), (k) and (l) of K.S.A. 1978 Supp. 65-3402. Subsection (j) defines "hazardous

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waste disposal area"; subsection (k), "hazardous waste storage areas"; and subsection (l), "hazardous waste processing facility." Although somewhat subtle in distinction, we think it is important that the first two definitions employ the word "area," while the latter uses the word "facility." Throughout the remaining sections of the act, there are no references to hazardous waste processing "area."

In every instance where the word "area" is employed, it relates to a "storage" area or to a "disposal" area. In our judgment, this evidences a clear legislative intent to differentiate between "areas" and "facilities." It indicates that, by the use of the term "areas" in K.S.A. 1978 Supp. 65-3406(n), the legislature meant to include within its provisions permittees operating hazardous waste storage areas and hazardous waste disposal areas.

To interpret the provisions of this subsection otherwise would ignore additional duties imposed upon the secretary by other subsections of the very statute here under consideration. Both subsections (i) and (j) thereof authorize, and the introductory language of the statute requires, the secretary to conduct such investigations or inspections as are necessary to implement the provisions of the act. It is these subsections which authorize and direct the secretary to monitor hazardous waste storage areas, hazardous waste disposal areas and hazardous waste processing facilities. If permittees for hazardous waste storage or disposal areas are not required to pay a fee, either of two results follow:

- (1) Permittees operating hazardous waste processing facilities would bear the total burden of the costs of monitoring such facilities and areas; or
- (2) The secretary would be unable to monitor hazardous waste storage or disposal areas, due to the insufficiency of funds therefor.

In our judgment, neither of these results was intended. The clearly stated purpose for such fees is "to reimburse the state for the costs of monitoring such facilities and areas during and after [the] operation of such facilities or areas." (Emphasis added.) K.S.A. 1978 Supp. 65-3406(n).

In light of the foregoing, it is our opinion that the Secretary of Health and Environment is authorized and, indeed, directed to

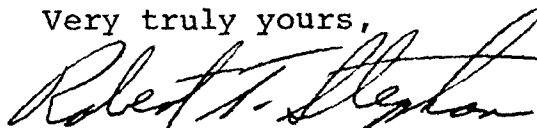
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adopt rules and regulations establishing a schedule of fees to be paid to the secretary by permittees operating hazardous waste processing facilities, hazardous waste storage areas or hazardous waste disposal areas. In our judgment, the fact that the statute does not specifically employ the precisely defined terms "hazardous waste storage area" or "hazardous waste disposal area" adds confusion, but is not tantamount to legislative oversight. In reaching this conclusion, we rely on the oft-stated rule of statutory construction, to wit:


"It is a fundamental rule of statutory construction, to which all others are subordinate, that the purpose or intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. This rule, stated in various forms, has been applied by this court throughout its history." (Emphasis added.) Hunziker v. School District, 153 Kan. 102, 107 (1941).

Therefore, it is our opinion that K.A.R. 28-29-62 does not exceed the statutory authority pursuant to which it was promulgated.

Very truly yours,



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Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm