



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82-21

Mr. Robert E. Davis  
Leavenworth County Attorney  
County Courthouse  
4th and Walnut Street  
Leavenworth, Kansas 66048

Re: Public Health -- Solid and Hazardous Waste --  
Restrictions on Local Authorities

Snyopsis: A county may not limit the use of a county sanitary landfill to local county refuse sources by virtue of the prohibition in K.A.R. 1981 Supp. 28-29-1 against local agencies enforcing requirement which would impede interstate or intrastate transportation or disposal of solid waste. Cited herein: K.S.A. 65-3401, K.A.R. 1981 Supp. 28-29-1.

\* \* \*

Dear Mr. Davis:

You state that the Leavenworth County Commission granted a special use permit to a private individual to allow his property to be used as a sanitary landfill for the county, subject to certain conditions to be set by the county commission. One of the conditions under consideration is the restriction of the landfill to Leavenworth County refuse sources. You ask whether this restriction may be properly imposed in light of K.S.A. 65-3401 et seq. and K.A.R. 1981 Supp. 28-29-1 et seq.

K.S.A. 65-3401 states that the policy of the State of Kansas regarding the safe and sanitary disposal of solid wastes is to:

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

"(b) Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

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

We note that issuance of the special use permit to a private individual is plainly within the scope of subsection (b) of the statute.

K.A.R. 1981 Supp. 28-29-1, promulgated by the Kansas Department of Health and Environment to regulate the disposal of solid wastes within the state in accordance with K.S.A. 65-3401 et seq., provides as follows:

"Nothing in these regulations shall interfere with the right of cities or counties to enact ordinances or resolutions for control of solid waste management practices which are more stringent than the requirements of these regulations except that no local agency shall enforce a requirement, other than those in this article, which would impede interstate or intrastate transportation, or disposal of solid waste, or which would impede establishment or use of facilities for regional management of solid waste."

We find no Kansas cases, nor do we find an administrative ruling or opinion by the Department of Health and Environment, which interpret the phrase, "no local agency shall enforce a requirement . . . which would impede interstate or intrastate transportation, or disposal of solid waste, or which would impede establishment or use of facilities for regional management of solid waste." Inasmuch as this regulation is legislative in nature, rules of interpretation applicable to statutes are to be utilized to interpret its meaning. Sutherland, Statutory Construction, 3rd Ed., §31.06.

The Kansas Supreme Court, in Hunter v. Haun, 210 Kan. 11 (1972), has set forth rules of statutory construction thus:

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is

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plain and unambiguous and also appropriate to the obvious purpose, the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the act." Id. at Syl. ¶1.

Looking at the plain language of the regulation, we find that no local agency may enforce a requirement which would "impede" interstate or intrastate transportation or disposal of solid waste. "Impede" has been defined as meaning, "To retard in movement or progress by means of obstacles or hindrances" or "obstruct" or "hinder." The New Century Dictionary, p. 798 (1953). "Enforce" has been defined in part as meaning, "put or keep (laws or rules) in force; compel obedience to." Id. at 499. Thus, the regulation may be interpreted as saying, "no local agency" -- which in this case would be the county -- "may put or keep a rule or regulation in force which would obstruct or hinder either interstate or intrastate disposal of solid waste."

In our judgment, a condition imposed by the county commission to prevent persons from outside the county from disposing of solid waste in the county landfill, whether those persons are from within or without the state, would constitute a requirement which would impede interstate or intrastate transportation or disposal of solid waste, and would thus be violative of the clear intent of K.A.R. 1981 Supp. 28-29-1. Therefore, it is our opinion the county commission may not impose such a condition upon the operation of the landfill.

In conclusion, a county may not limit the use of a county sanitary landfill to local county refuse sources by virtue of the prohibition in K.A.R. 1981 Supp. 28-29-1 against local agencies enforcing a requirement which would impede interstate or intrastate transportation or disposal of solid waste.

Very truly yours,



ROBERT T. STEPHAN  
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RTS:BJS:BLH:hle