



ROLAND W. BURRIS  
ATTORNEY GENERAL  
STATE OF ILLINOIS

March 2, 1993

FILE NO. 93-003

COUNTIES:  
Authority of Counties to  
Regulate the Mining  
of Fossil Fuels through  
Zoning

Honorable Larry S. Vandersnick  
State's Attorney, Henry County  
100 South Main Street  
Cambridge, Illinois 61238

Dear Mr. Vandersnick:

I have your letter wherein you inquire whether non-home-rule counties are preempted from enacting zoning ordinances which regulate the mining of fossil fuels under either the Surface-Mined Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 4501 et seq.; 225 ILCS 715/1 et seq.) or the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.; 415 ILCS 5/1 et seq.). For the reasons hereinafter stated, it is my opinion that non-home-rule counties may not regulate the mining of fossil fuels through their zoning powers.

Honorable Larry S. Vandersnick -2.

It is well established that non-home-rule counties possess only those powers which are expressly granted to them by the Constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Under Division 5-12 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, pars. 5-12001 through 5-12019; 55 ILCS 5/5-12001 through 5/5-12019), counties have been granted the authority to regulate and to restrict the use of specified real property. Section 5-12001 of the Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-12001; 55 ILCS 5/5-12001) provides, in pertinent part:

"Authority to regulate and restrict location and use of structures. For the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the county, \* \* \* the county board or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board, to regulate and restrict the intensity of such uses, \* \* \* to divide the entire county outside the limits of such cities, villages and incorporated towns into districts of such number, shape, area and of such different classes, according to the use of land and buildings, the intensity of such use \* \* \* and other classification as may be deemed best suited to carry out the purposes of this Division; \* \* \*.

\* \* \*

"

(Emphasis added.)

Honorable Larry S. Vandersnick -3.

Under section 5-12001, counties possess the general authority to regulate mining through the exercise of their zoning powers. In 1970, however, the General Assembly enacted the Environmental Protection Act, of which subsection 2(b) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1002(b); 415 ILCS 5/2(b)) provides:

" \* \* \*

(b) It is the purpose of this Act, as more specifically described in later sections, to establish a unified, statewide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.

\* \* \*

"

(Emphasis added.)

In interpreting the emphasized language of subsection 2(b), the Illinois Supreme Court has stated:

" \* \* \*

\* \* \* that, due to the Act's express purpose of 'establish[ing] a unified, state-wide program' to protect the environment [citation omitted] the Act was intended to preempt non-home-rule regulations. \* \* \*

\* \* \*

"

(Village of Carpentersville v. The Pollution Control Board (1990), 135 Ill. 2d 463, 468.)

The court further stated, however, that because of subsequent amendments, the Act no longer preempts all local zoning

Honorable Larry S. Vandersnick -4.

ordinances. (Village of Carpentersville, 135 Ill. 2d at 468.) In this regard, section 39 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1039, as amended by Public Acts 87-895, effective August 14, 1992; 87-1213, effective September 26, 1992; 415 ILCS 5/39) provides, in pertinent part:

" \* \* \*

(j) The issuance under this Act of a permit to engage in the surface mining of any resources other than fossil fuels shall not relieve the permittee from its duty to comply with any applicable local law regulating the commencement, location or operation of surface mining facilities.

\* \* \* "

(Emphasis added.)

Illinois courts had previously indicated that under the provisions of the Surface-Mined Land Conservation and Reclamation Act, the State had exclusive authority to regulate surface mining. (See, American Smelting & Refining Co. v. County of Knox (1975), 60 Ill. 2d 133, 139-40; Lily Lake Road Defenders v. County of McHenry (1992), 231 Ill. App. 3d 858, 865-66; Union National Bank & Trust Co. v. Board of Supervisors of Kendall County (1978), 65 Ill. App. 3d 1004, 1008.) In 1981, however, section 2 of the Surface-Mined Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 4502; 225 ILCS 715/2) was amended to provide, in pertinent part:

" \* \* \*

The issuance of a permit under this Act to engage in the surface mining of any resources

Honorable Larry S. Vandersnick -5.

other than fossil fuels is not intended to relieve the permittee from its duty to comply with other applicable state and local law regulating the commencement, location and operation of surface mining facilities." (Emphasis added.)

The plain language of section 39 of the Environmental Protection Act and section 2 of the Surface-Mined Land Conservation and Reclamation Act, in requiring permittees generally to comply with local ordinances regulating surface mining, clearly demonstrates that the General Assembly no longer intends for either the Environmental Protection Act or the Surface-Mined Land Conservation and Reclamation Act to preempt local zoning ordinances with respect to most mining operations. Thus, it appears that counties may generally regulate the surface mining of natural resources through their zoning powers. By express exemption, however, the General Assembly has provided that permittees for surface mining of those resources which are characterized as fossil fuels are not required to comply with local ordinances regulating surface mining. Consequently, it is my opinion that non-home-rule counties are preempted from enacting zoning ordinances which regulate the mining of fossil fuels by the provisions of both the Surface-Mined Land Conservation and Reclamation Act and the Environmental Protection Act.

Respectfully yours,



ROLAND W. BURRIS  
ATTORNEY GENERAL