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November 20, 1991

FILE NO. 91-034

COUNTIES:

Authority of a County
to Implement Solid Waste Recycling
Programs in Incorporated Areas

Honorable Thomas F. Baker
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Baker:

I have your letter wherein you inquire whether, under the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1989, ch. 85, par. 5951 et seq.), a county possesses the authority to mandate the implementation of recycling programs within the incorporated areas of the county. For the reasons hereinafter stated, it is my opinion that a county is generally authorized to require the implementation of recycling programs in both incorporated and unincorporated areas of the county.

The Solid Waste Planning and Recycling Act was enacted to reduce the environmental burden created by the disposal of waste, and to diminish the flow of certain materials into landfills. (Ill. Rev. Stat. 1989, ch. 85, par. 5952.) Subsection 2(a) of the Act (Ill. Rev. Stat. 1989, ch. 85, par. 5952) provides, in part:

" * * *

(2) * * * counties should have the primary responsibility to plan for the management of municipal waste within their boundaries to insure the timely development of needed waste management facilities and programs;

* * * "

(Emphasis added.)

For purposes of the Act, the term "municipal waste" is defined as follows:

" * * *

'Municipal waste' means any garbage, refuse, industrial lunchroom or office waste, and other material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities.

* * * "

(Ill. Rev. Stat. 1989, ch. 85, par. 5953.)

In addition, each county (as well as each municipality with a population exceeding 1,000,000) is expressly required to adopt and submit to the State a detailed plan for the management of municipal waste produced within its territory. (Ill. Rev. Stat. 1989, ch. 85, par. 5954.) An integral component of

each of the county waste management plans is a recycling program. (Ill. Rev. Stat. 1989, ch. 85, par. 5956.)

Under the language of subsection 2(a) quoted above, each county bears the primary responsibility for developing a plan to manage recyclable materials and other municipal waste generated within its boundaries. Section 6 of the Act (Ill. Rev. Stat. 1989, ch. 85, par. 5956) provides, in pertinent part:

"Each county waste management plan adopted under Section 4 shall include a recycling program. Such recycling program:

(1) shall be implemented throughout the county and include a time schedule for implementation of the program.

* * *

(5) may require residents of the county to separate recyclable materials at the time of disposal or trash pickup.

* * *

"

(Emphasis added.)

It is well established that counties possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers 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.) To determine whether counties can mandate the implementation of recycling programs in all areas of the county, it is necessary to review the provisions of the Solid Waste Planning and Recycling Act and to establish the extent of the authority granted to each county.

Under the language of subsection 6(1) of the Act quoted above, counties are given the authority, without limitation, to implement recycling programs "throughout the county". In construing a statute, its language should be given its plain and ordinary meaning. (Williams v. The Illinois State Scholarship Commission (1990), 139 Ill. 2d 24, 50.) In interpreting the word "throughout", the courts have consistently found that it is an expansive term used to mean "in or to every part of." (Ruiz v. Morton (9th Cir. 1972), 462 F.2d 818, 820; Idaho Water Resource Board v. Kramer (S. Ct. Idaho 1976), 548 P.2d 35, 70; McCall v. Automatic Voting Machine Corp. (S. Ct. Ala. 1938), 180 So. 695, 696.) Consequently, the language of subsection 6(1) indicates that the General Assembly intended that the recycling programs were to be carried out on a county-wide basis, without regard to whether areas of the county were incorporated as municipalities (except for those cities with more than 1,000,000 inhabitants, which are required to promulgate and implement their own waste management programs). As incorporated areas are necessarily located within the boundaries of one or more counties, the Act's

language clearly contemplates the implementation of recycling programs in incorporated, as well as unincorporated, areas of the county.

This conclusion is supported by the fact that, in addition to counties, the General Assembly has expressly granted the power to adopt waste management plans to municipalities with populations in excess of 1,000,000. It is well established that where a statute contains an express exception, all other possible exceptions not expressed are thereby excluded. (Howlett v. Doglio (1949), 402 Ill. 311, 320; In re Westland (1977), 48 Ill. App. 3d 172, 176.) The grant of authority to cities in excess of 1,000,000 to promulgate their own waste management plans, is, in essence, an exception to the general authority of counties to promulgate such plans. The express exception of one class of municipalities is strongly indicative of an intent to include all other municipalities within the purview of the counties' plans.

Although your inquiry pertains solely to whether county recycling plans may be made applicable to incorporated areas of the county, I believe that it is also necessary to discuss briefly the applicability of such plans to unincorporated territory. As previously noted, section 6 of the Solid Waste Planning and Recycling Act provides that a county plan "shall be implemented throughout the county". Section 13.20 of the Township Law of 1874 (Ill. Rev. Stat. 1990 Supp., ch. 139, par. 126.10), however, provides, in pertinent part:

" * * *

The township board of trustees may adopt by ordinance such rules and regulations relating to recycling programs in unincorporated areas of the township as it may from time to time deem necessary and may provide penalties for the violations thereof."

Although section 13-20 of the Township Law of 1874 does not, by its express terms, apply to incorporated areas, and thus does not affect my response to your question, it does appear to conflict with section 6 of the Solid Waste Planning and Recycling Act, which purports to vest the primary responsibility and authority to regulate solid waste in counties. In order to resolve this potential conflict, the General Assembly has amended section 7 of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1989, ch. 85, par. 5957, as amended by Public Act 87-290, approved September 4, 1991) to provide, in part, as follows:

" * * *

If a township within the county is operating a recycling program on the effective date of the plan which substantially conforms with or exceeds the requirements of the recycling program included in the plan, the township may continue to operate its recycling program, and such operation shall constitute, within the township, implementation of the recycling program included in the plan. A township may at any time adopt and implement a recycling program that is more stringent than that required by the county waste management plan."

The General Assembly has thus clarified that township recycling plans which were implemented prior to the effective

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date of the county's recycling plan, and which substantially comply with or are more stringent than the county's plan, may still be enforced, and further, that townships possess continuing authority to implement recycling plans in unincorporated areas which are more stringent than the county's plan.

Therefore, for the reasons set forth above, it is my opinion that counties are authorized to mandate the implementation of recycling programs in both incorporated and unincorporated areas of the county, except for those areas which comprise part of a municipality with a population exceeding 1,000,000 inhabitants, and except in unincorporated areas of townships in which the township board has implemented a recycling plan which substantially conforms to, or exceeds, the requirements of the county's plan.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL