



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

January 7, 2003

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 03-001

TOWNSHIPS:  
Brush Pickup in  
Unincorporated Areas

-  
The Honorable Meg Gorecki  
State's Attorney, Kane County  
100 South Third Street  
Geneva, Illinois 60134

Dear Ms. Gorecki:

I have Assistant State's Attorney M. Katherine Moran's letter wherein she forwarded your inquiry regarding whether a township or a township road district may provide residents of unincorporated areas of the township free brush pickup on either a seasonal or other, periodic basis. For the reasons hereinafter stated, it is my opinion that a township has authority to provide brush pickup to residents of unincorporated areas only with referendum approval, as provided in article 210 of the Township Code (60 ILCS 1/210-5 et seq. (West 2000)). Further, it is my opinion that a township road district has no authority to provide such services.

According to the information we have been furnished, the county board of Kane County has adopted an ordinance banning leaf burning in unincorporated areas of the county, effective January 1, 2003. Concern has been expressed that unless the several townships have the authority to implement brush pickup programs, brush and leaves will choke culverts and drainage ditches in rural areas of the county causing hazards to the traveling public.

Article 210 of the Township Code expressly authorizes a township, after obtaining referendum approval by the electors of the unincorporated areas of the township, to contract for the collection, recycling and disposal of ashes, refuse and garbage. Such a contract may be funded either by a tax upon the areas of the township served or by direct payment of fees by the users of the services. (60 ILCS 1/210-15 (West 2000).) Section 210-10 of the Township Code (60 ILCS 1/210-10 (West 2000)) specifically includes tree branches and yard trimmings within the definition of "refuse". Provision of a brush pickup program would appear, therefore, to fall squarely within the authority granted to townships under article 210 of the Code.

The expression of one mode of action in a statute ordinarily excludes any other, even if not expressly prohibited by negative words. (City Savings Ass'n v. International Guaranty

& Insurance Co. (1959), 17 Ill. 2d 609, 612.) Indeed, the apparent belief by the General Assembly that it was necessary to provide a specific grant of authority to townships for the operation of a brush removal program militates against any implication of such powers from those expressly granted.

Therefore, it is my opinion that a township may implement a branch pickup program only in accordance with the provisions of article 210 of the Code. Exercise of the authority granted therein is contingent upon the adoption, by the township board, of a resolution requesting that the question be submitted to the electors of the unincorporated areas of the township (60 ILCS 1/210-5 (West 2000)), and its approval by a majority of those electors. Consequently, in the absence of referendum approval, a township is without authority to expend township funds or to use township equipment for a brush removal program.

With respect to township road districts, such districts are governmental entities separate and distinct from the township, which are under the general supervision of a township highway commissioner. (1976 Ill. Att'y Gen. Op. 173.) The Illinois Highway Code (605 ILCS 5/1-101 et seq. (West 2000)) governs the powers and duties of township highway commissioners. (60 ILCS 1/73-5 (West 2000).)

Section 9-111.1 of the Highway Code (605 ILCS 5/9-111.1 (West 2000)) authorizes highway authorities, including township highway commissioners, to inspect bridges and culverts on public highways, and to remove driftwood and other materials accumulated within the right of way which obstruct the free flow of water. Section 6-802 of the Highway Code (605 ILCS 5/6-802 (West 2000)) authorizes a highway commissioner to acquire the necessary property to build, widen, alter, relocate or straighten a ditch, drain or watercourse in order to drain or protect a road if the commissioner finds it necessary to do so. In my opinion, neither of these provisions can logically be extended to provide authority for the operation of a program for pickup of leaves and brush intentionally left or deposited on the right of way by abutting private property owners.

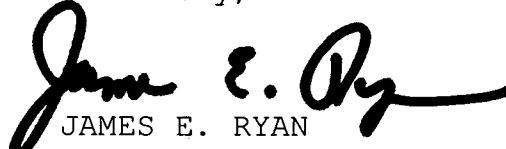
Section 9-117 of the Highway Code (605 ILCS 5/9-117 (West 2000)) provides that any person who places any material in ditches or on the right of way in such a way as to interfere with the free flow of water for more than 10 days, without the permission of the highway authority, is guilty of a petty offense. Section 9-117 further provides that if such materials are not removed by the land owner after 10 days notice, the highway authority may remove them and collect the cost of removal from the owner. Nothing in the provisions of section 9-117, however,

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suggests that a general brush collection program is contemplated by that statute. Rather, it is clear that the responsibility for brush removal ultimately falls upon the landowner.

In conclusion, therefore, it is my opinion that neither townships nor township highway commissioners have either the express or the inherent power to provide brush pickup services to persons in unincorporated areas of the township, except to the extent that article 210 of the Township Code may permit the operation of such programs with referendum approval.

Sincerely,

  
JAMES E. RYAN  
Attorney General