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STATE OF ALABAMA

SEP 28 1989

89-00450

Honorable Sid Holcomb
President
DeKalb County Commission
Room 304, Courthouse
Fort Payne, Alabama 35967

Solid Waste Disposal - Counties -
Public Hearings

The term "host government," as used in Legislative Act 89-824 makes reference to the governmental body which exercises legislative authority in a governmental unit.

The DeKalb County Commission may conduct hearings for the purpose of granting waivers to the temporary moratorium on issuing and modifying permits for construction and operation permits for certain solid waste management facilities only when the landfills lie within the area where the commission exercises legislative authority.

DeKalb County Commission may not conduct public hearings on applications involving landfills which are located totally within a particular municipality.

Dear Mr. Holcomb:

This opinion is issued in response to the request by the DeKalb County Commission for an opinion from the Attorney General.

QUESTIONS

- (1) To what does the term "host government" refer in Act 89-824, page 15?
- (2) Is the DeKalb County Commission the proper governing body to conduct public hearings on applications involving the landfills which are located totally within a particular municipality?

FACTS AND ANALYSIS

Regarding your first question, Legislative Act 89-824 became law on May 16, 1989. It provides for the development and implementation of a solid waste management plan. The Act further places a temporary moratorium on the issuance and modification of permits for the construction and operation of certain solid waste management facilities. By the terms of the Act, the moratorium provision can be waived by the Director of the Alabama Department of Environmental Management upon a recommendation by the State Health Officer, accompanied by a resolution from the "host government." In pertinent part, Section 10, the waiver provision of the Act, reads thusly:

" . . . The Director is hereby authorized to waive the limitation imposed by this moratorium for a particular facility upon a finding based upon a recommendation by the State Health officer and accompanied by a resolution from the host government. The request for waiver shall be initiated by resolution of the governing body of the jurisdiction which recognizes a potential crisis in solid waste management in the jurisdiction unless a permit application or modification for a facility intended to serve the area is approved." (Emphasis added.)

Act 89-824, page 15.

According to the Act, its terms are defined as those in Code of Alabama 1975, Section 22-27-2. That section, however, fails to define the term "host government."

Absent precise language, courts construe statutes by looking to the legislative intent. The Alabama Supreme Court has consistently held that where statutory language lacks preciseness, the legislative intent "may be gleamed from the language used [in the statute]." Ex parte Holladay, 466 So.2d 956, 960 (Ala. 1985). See, Clark v. Houston County Commissioner, 507 So.2d 902 (Ala. 1987).

The term "host" denotes one who "receives or entertains" Random House Dictionary 640 (College Edition 1968). The term "government" denotes, inter alia, "[t]he regulation, restraint, supervision or control, which is exercised upon the individual members of an organized jural society by those invested with authority. . . ." Black's Law Dictionary 625 (5th ed. 1979). An application of those definitions, and the Alabama Supreme Court directives, leads us to conclude that the term "host government" refers to the governmental body which exercises legislative authority in the governmental unit; i.e., county or municipality, where the landfill lies.

In light of the foregoing, we answer your second question in the negative.

CONCLUSION

It is the opinion of this office that the term "host government," as used in Act 89-824, means the governmental unit which exercises legislative authority and that the DeKalb County Commission may not conduct public hearings on applications concerning landfills which are located totally within a municipality.

We trust that we have satisfactorily answered your questions. If we can be of any further assistance to you, please do not hesitate to call on us.

Sincerely,

DON SIEGELMAN
Attorney General

By:



NORBERT H. WILLIAMS
Assistant Attorney General