

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

February 15, 2000

Opinion No. 00-025

Authority of McMinn County to Impose Host Fee on Privately Owned Landfill Inside the County

**QUESTION**

Does McMinn County have authority under the Solid Waste Management Act of 1991 to impose a host fee or tipping fee on a privately owned landfill within its borders that accepts both municipal solid waste from a neighboring county and waste generated by private industry?

**OPINION**

Under the provisions of Tenn. Code Ann. § 68-211-835(e) of the Solid Waste Management Act (SWMA), McMinn County may impose a surcharge only on municipal solid waste received at the privately owned landfill within its borders, as long as this facility is used by other counties in the same region formed pursuant to the SWMA and the fee is approved by a resolution of each of the county legislative bodies in the region. Revenue from such a fee may be expended for solid waste management purposes or for purposes related to offsetting any costs incurred by the county for hosting such a facility. The SWMA does not authorize the county to impose a tipping fee on this private facility.

**ANALYSIS**

The Solid Waste Management Act of 1991, Tenn. Code Ann. §§ 68-211-801, *et seq.*, authorizes any county that hosts a solid waste disposal facility that is “used by other counties in the same region formed pursuant to this part” to levy a surcharge on the municipal solid waste received at the facility “by resolution of its county legislative bodies in the region.” Tenn. Code Ann. § 68-211-835(e). The fee imposed is intended to offset any costs incurred by the county hosting such a facility, or simply for solid waste management purposes. *Id.* Although this provision of the SWMA does not restrict the imposition of such a surcharge to government-owned solid waste disposal facilities, it does expressly limit the application of the fee to municipal solid waste received at the subject facility. The Act defines “municipal solid waste” as:

. . . any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste, and any other material resulting from the operation of residential,

municipal, commercial or institutional establishments and from community activities; provided, that “municipal solid waste” *does not include the following*:

- (A) Radioactive waste;
- (B) Hazardous waste as defined in § 68-212-104;
- (C) Infectious waste;
- (D) Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and
- (E) Industrial waste which may include office, domestic, or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility.

Tenn. Code Ann. § 68-211-802(10) (emphasis supplied).

According to the facts presented in this request, a privately owned landfill located in McMinn County currently accepts both municipal solid waste from the City of Cleveland in Bradley County, as well as “waste from private industry.” The exact character or origin of the waste received at this facility from private industry is not apparent. But it is our understanding that McMinn County is part of a ten county municipal solid waste region established in accordance with the provisions of Tenn. Code Ann. § 68-211-813, and that this multi-county solid waste region also includes Bradley County, which is sending municipal solid waste to the facility in question. It therefore appears that McMinn County has the authority under section 68-211-835(e) to impose a host surcharge on any “municipal solid waste” received at this private facility, as long as the waste originates from within the ten county region and the fee is approved by resolution of all the county legislative bodies within the municipal solid waste region.

It is the opinion of this office that McMinn County does not have the authority under the SWMA to impose a tipping fee on any of the waste received at this private facility, because the tipping fee provisions under the Act are restricted to waste received at publicly owned solid waste disposal facilities. *See* Tenn. Code Ann. § 68-211-835(a)-(c). Other provisions of section 68-211-835, in particular subsections (f)(1)(A) and (g), do authorize counties to impose a surcharge on municipal solid waste or a solid waste disposal fee, but these charges are not in the nature of either a host fee or tipping fee and they are more limited in their application.

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PAUL G. SUMMERS  
Attorney General and Reporter

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MICHAEL E. MOORE  
Solicitor General

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ELIZABETH P. McCARTER  
Senior Counsel

Requested by:

Robert S. McKee  
State Representative  
206 War Memorial Building  
Nashville, TN 37243--0123