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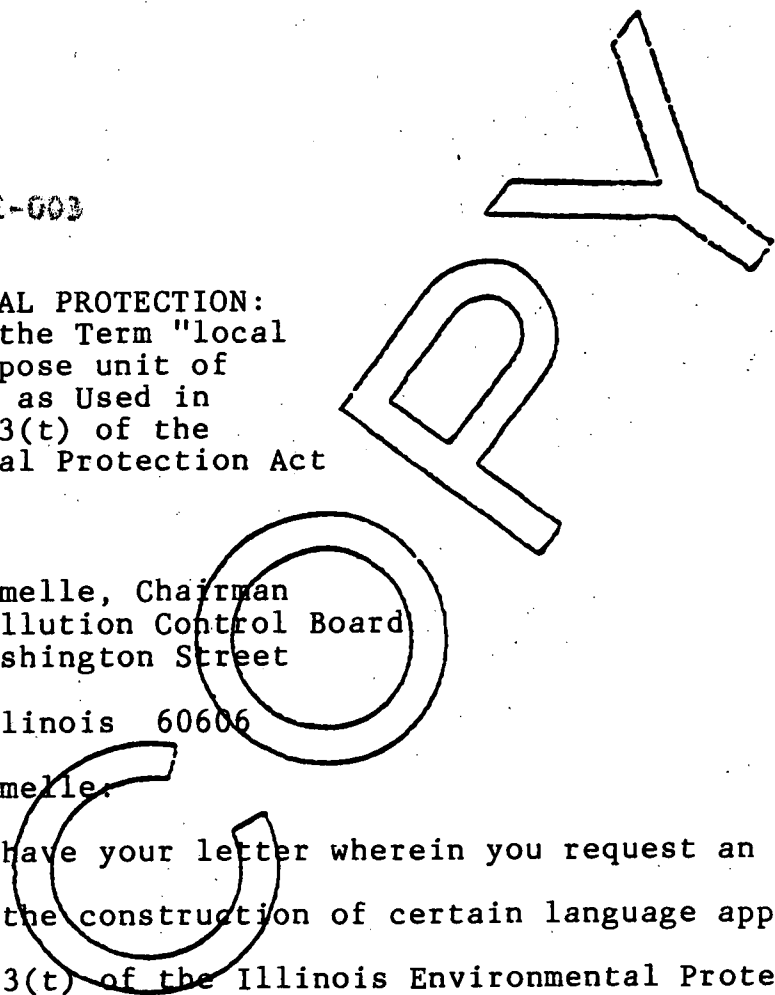
FILE NO. 82-003

ENVIRONMENTAL PROTECTION:
Meaning of the Term "local
general purpose unit of
government" as Used in
Subsection 3(t) of the
Environmental Protection Act

Jacob D. Dumelle, Chairman
Illinois Pollution Control Board
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Dear Mr. Dumelle:

I have your letter wherein you request an opinion concerning the construction of certain language appearing in subsection 3(t) of the Illinois Environmental Protection Act [the Act] (Ill. Rev. Stat. 1980 Supp., ch. 111 1/2, par. 1003, as amended by Public Act 82-682, effective November 12, 1981). Firstly, you ask what units of local government are included in



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the phrase "local general purpose unit of government" contained in subsection 3(t) of the Act. For the reasons hereinafter stated, it is my opinion that the only governmental units described by the term "local general purpose unit of government" are counties and municipalities. Secondly, you have inquired whether, in accordance with subsection 3(t) of the Act, a facility would be classified as a regional pollution control facility in a circumstance where the site is located in an unincorporated area of a county, its service area does not extend beyond the county boundaries, but such service area includes other local general purpose units of government. For the reasons hereinafter stated, it is my opinion that such a facility is a regional pollution control facility within the meaning of the Act.

Subsection 3(t) of the Act as amended provides that:

"(t) 'Regional Pollution Control Facility' is any waste storage site, sanitary landfill, waste disposal site, waste transfer station or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under 'An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers,' approved May 29, 1889, as now or hereafter amended. The following are not regional pollution control facilities: (1) sites or facilities located within the boundary of a local general purpose unit of government and intended to serve only that entity; (2) waste storage sites regulated under 40 CFR, Part 761.42; or (3) sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste

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transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person.

A new regional pollution control facility is:

- (1) a regional pollution control facility initially permitted for development or construction after July 1, 1981; or
- (2) the area of expansion beyond the boundary of a currently permitted regional pollution control facility; or
- (3) a permitted regional pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste." (Emphasis added.)

Because the Act defines a "regional pollution control facility" in terms of certain designated facilities which accept waste from or serve an area "that exceeds or extends over the boundaries of any local general purpose unit of government", the question arises as to precisely what units of local government are "general purpose" units.

There is no express definition of the term "local general purpose unit of government" in the Illinois statutes, Constitution or case law. In determining the meaning that the General Assembly meant to ascribe to the term "local general purpose unit of government", reference to the definition of the term "units of local government" is pertinent.

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The term "units of local government" is defined in section 1, article VII, of the Illinois Constitution of 1970 as follows:

"* * * 'Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."
(Emphasis added.)

As an initial matter, the term "local general purpose unit of government" cannot include special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects. Neither can the term include school districts. The question remains as to whether the term includes counties, municipalities (cities, villages, and incorporated towns) and townships or is limited to counties and municipalities.

Under the local government article of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII), it is clear that counties and municipalities, as a class of units of local government, are to be distinguished from townships. Section 6 of article VII provides that only counties and municipalities are or may become home rule units. Section 7 enumerates the powers which counties and municipalities which are not home rule units shall have in addition to those granted them by

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law. Those enumerated powers include the power to make local improvements by special assessment and to exercise such power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of the constitution unless that power is subsequently denied by law to any such other units of local government. (Emphasis added.) Other enumerated powers include the power, by referendum, to adopt, alter or repeal their statutorily provided forms of government; to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Section 8 of article VII of the Illinois Constitution of 1970, entitled "Powers and Officers of School Districts and Units of Local Government Other Than Counties and Municipalities", provides that:

"Townships, school districts special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law...No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special

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assessments to any of the foregoing classes of units which do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch." (Emphasis added.)

The powers of the class of units of local government covered by section 8 are considerably more restricted than those powers of counties and municipalities provided in section 7.

The existence of such a distinction in classes of general and special units of local government is further supported by reference to the Record of Proceedings of the Sixth Illinois Constitutional Convention. Initially, the majority of the Local Government Committee proposed the following definitions to be included in the local government article of the 1970 Constitution:

"For the purpose of this Article, unless a different use clearly appears, 'governing board' means the county board of a county, the legislative body of a city, village, or incorporated town, and the body with legislative authority in units of local special government; 'municipality' means a city, village, or incorporated town; 'units of local general government' means counties, cities, villages, and incorporated towns; 'units of local special government' means townships, special districts, and units which exercise limited governmental powers or powers in respect to limited governmental subjects so designated by general law, but does not include school districts, and 'units of local government' means units of local general government and units of local special government, but does not include school districts." (Emphasis added.) (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1576-77 (hereinafter cited as Proceedings.)

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According to the article From Bone Gap to Chicago: A History of the Local Government Article of the 1970 Illinois Constitution (1976) (Joan C. Anderson and Ann Lousin, 9 J. Mar. J. Prac. & Proc. 697, 727-28), those definitions were eventually eliminated because it was felt that the definitions were unnecessary, cumbersome and not properly placed in a constitutional provision. Additionally, it was argued that careful draftsmanship would obviate the necessity for such a section in a modern constitution. When the local government article was finalized, it included only the definition of "municipalities" and the definition of "units of local government". As is apparent from the above discussion of sections 6, 7 and 8, the section was ultimately redrafted to make the specific classification of "units of local general government", which included only counties and cities, villages, and incorporated towns, and "units of local special government", which specifically included townships, unnecessary. Although the term "local general purpose unit of government", as it appears in Public Act 82-682, is not identical to the term "unit of local general government", as discussed above, the terms are substantially equivalent and it is apparent that the General Assembly, by using the term "local general purpose unit of government", meant to make the same distinction initially made by the drafters of the local government article.

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Such a determination is further supported by reference to the limited statutory powers of townships. (Ill. Rev. Stat. 1980 Supp., 1979, ch. 139, pars. 38-43.) Townships have only those powers expressly granted or necessarily implied and no others. (Ill. Const. 1970, art. VII, § 8; Ill. Rev. Stat. 1979, ch. 139, par. 38.) Generally, pursuant to section 2 of article IV of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1979, ch. 139, par. 38), townships have the power to sue and be sued, to acquire and hold real and personal property, to contract, to expend Federal funds or their own funds for certain purposes, to acquire singly, or jointly with a municipality, land or any interest therein by gift or purchase, but not by condemnation, within the township, to improve the land for industrial purposes and then to donate and convey such interest acquired to the Industrial Development Authority. Additionally, the electors present at the annual town meeting have the powers specifically enumerated in sections 3.01 through 3.35 of article IV (Ill. Rev. Stat. 1979, ch. 139, par. 39). Those powers include, inter alia, the power to provide for the institution, defense or disposition of civil actions, in all controversies between the town and any other town, or any individual or corporation, in which the town is interested (Ill. Rev. Stat. 1979, ch. 139, par. 39.05), the power to establish and maintain pounds (Ill. Rev. Stat. 1979, ch. 139, par. 39.10), and the power to license

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and regulate the location of all places of business of purchasers, traders and dealers in junk. (Ill. Rev. Stat. 1979, ch. 139, par. 39.12.)

Finally, words in statutes should be given their commonly accepted meaning unless otherwise defined by the General Assembly. (Stiska v. City of Chicago (1950), 405 Ill. 374, 379.) In addition, the Illinois Supreme Court has held that, unless specifically defined, words appearing in legislative enactments should be given their common dictionary meaning or commonly accepted use. (Bowes v. City of Chicago (1954), 3 Ill. 2d 175, 200-01.) The word "general" is defined in Webster's Third New International Dictionary (p. 944), in pertinent part, to mean:

"* * * 4: marked by broad overall character without being limited, modified, or checked by narrow precise considerations: concerned with main elements, major matters rather than limited details, or universals rather than particulars: approximate rather than strictly accurate (a -- outline) (bearing a -- resemblance to the original) (the rock formations of the state have a -- northeast-southwest trend -- Amer. Guide Series: N.H.) 5: not confined by specialization or careful limitation: not limited to a particular class, type, or field: inclusive and manifesting or characterized by scope, diversity, or variety: BROAD, CATHOLIC, COMPREHENSIVE * * *"
(Emphasis added.)

The powers expressly granted townships are not "general" in nature.

When construing a statute to ascertain the intention of the General Assembly, a statute should be construed as a

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whole and the intent gathered therefrom. (Winks v. Board of Education (1979), 78 Ill. 2d 128, 135-36; Illinois Bell Telephone Co. v. Ames (1936), 364 Ill. 362, 365-66.) A reading of Public Act 82-682 in its entirety further confirms the conclusion that "local general purpose unit of government" includes only counties and municipalities. Public Act 82-682 amended the Illinois Environmental Protection Act by significantly altering requirements for approving and permitting new regional pollution control facilities. Subsection 39(c) of the Act (Ill. Rev. Stat. 1980 Supp., ch. 111 1/2, par. 1039, as amended by P.A. 82-682, effective November 12, 1981) provides that:

"Except for those facilities owned or operated by sanitary districts organized under 'An Act to create sanitary districts and to remove obstructions in Des Plaines and Illinois rivers,' approved May 29, 1889, as now or hereafter amended, no permit for the development or construction of a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of said facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area in which the facility is to be located in accordance with Section 39.1 of this Act. No permit for the development or construction of a new facility other than a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the applicant has secured all necessary zoning approvals from the unit of local government having zoning jurisdiction over the proposed facility." (Emphasis added.)

Consequently, if a facility is a new regional pollution control facility, the Illinois Environmental Protection Agency [the

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Agency] may not issue a permit for its development or construction unless its location has been approved by "the County Board of the county if in an incorporated area, or the governing body of the municipality when in an incorporated area" in accordance with section 39.1 of the Act. Where a new facility is non-regional, the Agency may grant a permit upon proof that the applicant has secured "all necessary zoning approvals from the unit of local government having zoning jurisdiction".

(Emphasis added.) However, with reference to the issuance of permits for new regional pollution control facilities, counties or municipalities only must approve a site location in accordance with sections 39 and 39.1 of the Act. Additionally, only the decision of a county board or the governing body of a municipality refusing to grant the location approval of a new regional pollution control facility under section 39.1 is appealable to the Pollution Control Board. It is apparent that townships have no role in the procedures established for the siting of new regional pollution control facilities and that, for all practical purposes, Public Act 82-682, in terms of its impact on local government, is concerned exclusively with counties and municipalities.

Subsection 39(c) provides in pertinent part that:

" * * * No permit for the development or construction of a new facility other than a new regional pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the applicant has secured all necessary

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zoning approvals from the unit of local government having zoning jurisdiction over the proposed facility." (Emphasis added.)

Subsection 39.1(f) specifically provides:

"(f) The siting approval, procedures, criteria and appeal procedures provided for in this Act for new regional pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for such facilities. Local zoning or other local land use requirements shall not be applicable to such siting decisions."

Because townships are "units of local government", a township board of auditors, which is authorized to act pursuant to the "Township Zoning Act" (Ill. Rev. Stat. 1979, ch. 139, pars. 39.28, 301 et seq.), is, within the scheme of Public Act 82-682, limited to its powers of local zoning with reference to certain non-regional facilities over which it may have zoning jurisdiction.

You have also inquired whether, in accordance with subsection 3(t) of the Act, as amended, a facility would be classified as a regional pollution control facility in the circumstance where a site is located in an unincorporated area of the county, its service area does not extend beyond the county boundaries, but such service area includes other local general purpose units of government.

Subsection 3(t) of the Act as amended provides in pertinent part that:

"'Regional Pollution Control Facility' is any waste storage site, sanitary landfill, waste disposal

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site, waste transfer station or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. * * *

* * *

"

(Emphasis added.)

For the reasons discussed above, a "local general purpose unit of government" is a county or a municipality. The statute, by its own terms, provides that a regional pollution control facility is a facility which serves an area "that exceeds or extends over the boundaries of any local general purpose unit of government". (Emphasis added.) Consequently, a facility such as you describe, having a service area which includes a municipality, is a regional pollution control facility even though its service area does not extend beyond the boundaries of the county itself.

Very truly yours,

A T T O R N E Y G E N E R A L