S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-154

County's Duty to Accept Waste Tires for Storage Under Tenn. Code Ann. § 68-211-866

QUESTION

Is Coffee County required to accept all waste tires submitted for storage as provided in Tenn. Code Ann. § 68-211-866 even if the one dollar ($1.00) pre-disposal fee imposed by Tenn. Code Ann. § 67-4-1601(a) has not been paid?

OPINION

Yes. The county may not refuse to accept waste tires under Tenn. Code Ann. § 68-211-866 based on the failure of the tire dealer to pay the one dollar ($1.00) pre-disposal fee assessed by Tenn. Code Ann. §67-4-1603 upon the retail sale of the tire when it was new.

ANALYSIS

The General Assembly enacted a pre-disposal fee for new tires under Tenn. Code Ann. §§67-4-1601, *et seq.*, as follows:

> (a) A pre-disposal fee in the amount of one dollar ($1.00) per tire is imposed on each person exercising the privilege of making retail sales of new tires in this state.

Tenn. Code Ann. §67-4-1603(a)(1998). The pre-disposal fee is a privilege tax for making a retail sale of new tires in Tennessee. In accordance with Tenn. Code Ann. § 67-4-1601, the Commissioner of Revenue administers and collects the pre-disposal fee.

The 2000 General Appropriations Act appropriated the revenues collected from the fee imposed by Tenn. Code Ann. §§ 67-4-1601, *et seq.*, to the "Solid Waste Assistance Fund".[1] 2000 Tenn. Pub. Acts 994, §10, Item 18. Monies in the fund may be expended for activities authorized

[1] The Solid Waste Assistance Fund that is listed in the General Appropriations Act under 2000 Tenn. Pub. Acts 994, §1, Title III-5, Item 25, is the Solid Waste Management Fund created under Tenn. Code Ann. § 68-211-821.

and specified by the Solid Waste Management Act of 1991. Tenn. Code Ann. § 68-211-821 (Supp. 1999).

Tenn. Code Ann. § 68-211-866 prohibits municipal solid waste disposal facilities and incinerators from accepting whole waste tires for disposal. Instead, counties are required to provide a site to receive and store waste tires if sites are not otherwise available.

> (a) No municipal solid waste disposal facility or incinerator shall accept for disposal any whole waste tires, lead-acid batteries or used oil when an operator or attendant either knew, or should have known, of the presence of such prohibited materials; provided, that, subject to other applicable law and regulations, whole waste tires may be incinerated.
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> (b) Each county shall provide directly, by contract or through a solid waste authority at least one (1) site to receive and store waste tires, used automotive oils and fluids, and lead-acid batteries, if adequate sites are not otherwise available in the county for the use of the residents of the county. A single site need not receive all of the items for which collection is required by this section, but all items listed above shall have at least one (1) site for reception and storage in the county. The operator of any such sites provided by a county shall sell and/or cause the transfer of the recyclable materials stored at these sites to a commercial recycler or a regional receiving facility for such wastes as often as is practicable.

Tenn. Code Ann. § 68-211-866 (1996). One of the purposes for which the fund may be used is for the purchase of mobile tire shredders by the Tennessee Department of Environment and Conservation to shred whole waste tires. Tenn. Code Ann. § 68-211-867 (1996). Whole, unshredded tires are prohibited at landfills. However, shredded tires may be disposed of in landfills. *Id.* The revenues collected under Tenn. Code Ann. §§ 67-4-1601, *et seq*., are available to fund the appropriations made for the fund, which is administered by the Tennessee Department of Environment and Conservation.

The revenues from the Tenn. Code Ann. § 67-4-1603 pre-disposal fee are not being generated to compensate counties for the receipt and storage of the waste tires under Tenn. Code Ann. § 68-211-866. The statutes clearly state that "a county may not impose any special disposal fee or surcharge on tires in addition to the fee imposed by § 67-4-1603." Tenn. Code Ann. § 67-4-1604 (1999). However, the statutory scheme does provide that the "tires shall be subject to the same tipping fee and other surcharges authorized by § 68-211-835 as are imposed on other wastes." *Id.* The fees and surcharges reflect the cost of providing solid waste management services by the county, including waste tire storage services.

By virtue of the 2000 General Appropriations Act, the revenues generated from the Tenn. Code Ann. § 67-4-1603 pre-disposal fee finance certain programs administered by the Tennessee

Department of Environment and Conservation under the Solid Waste Management Act of 1991. There is nothing in the statutory scheme that authorizes the county to refuse to accept waste tires for storage based on the failure to pay the pre-disposal fee established by Tenn. Code Ann. § 67-4-1603.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SOHNIA W. HONG
Assistant Attorney General

Requested by:

Doyle Lewis, Jr.
State Representative
108 War Memorial Building
Nashville, TN 37243-0147