

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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February 5, 2009

Opinion No. 09-12

Effects of Special Legislation Extending County's Authority Over Disposal of Solid Waste

**QUESTIONS**

1. Would enactment of a private act, which prohibits the construction of any new solid waste disposal or processing facility in a specific county by any person, county, municipality, or private entity located outside of such county but which gives the county legislative body authority to approve or disapprove such construction if undertaken by an individual or business located within such county, contravene the Solid Waste Management Act of 1991, Title 68, Chapter 211, Part 8, or any other law of general application?
2. If this special legislation is enacted, would it be considered unconstitutional and in violation of Article XI, Section 8 or any other constitutional provisions?

**OPINIONS**

1. Yes. The proposed special legislation would contravene the Solid Waste Management Act of 1991, Tenn. Code Ann. § 68-211-801 *et seq.*, and Tenn. Code Ann. § 68-211-701 *et seq.*, known as the "Jackson Law," which are both general laws that control when a local government in Tennessee can prohibit the construction of a new solid waste disposal or processing facility within its borders.
2. Yes. The proposed special legislation would be unconstitutional because there is no rational basis on the face of the proposed special legislation nor can this Office conceive of any rational basis as to why one county should be excepted from general laws that apply to all other counties in Tennessee controlling when local governments can prohibit the construction of new solid waste landfills within their borders. As a result, the proposed special legislation is unconstitutional under Article XI, Section 8, as invalid class legislation.

**ANALYSIS**

1. This request seeks an opinion regarding the validity of proposed special legislation in the form of a private act for Lewis County, which would prohibit any individual, county, municipality, or private entity located outside of the county from obtaining a permit for the construction of a new solid waste disposal or processing facility within Lewis County. The proposed private act also prohibits a permit from being issued to individuals or businesses located within Lewis County unless the county legislative body approves of the project after

considering six (6) specific factors specified in the proposed private act, which focus on the type of waste, method of disposal, and impact on the local community.

The proposed private act essentially establishes a program specifically for Lewis County, which would allow the county to keep out-of-county residents from constructing new solid waste landfills within Lewis County. It also allows only individuals and businesses that are located within Lewis County the right to have their project go before the county legislative body for approval or disapproval in consideration of specific factors provided in the private act. Such a program is clearly inconsistent with and contravenes the comprehensive statewide program established by the Solid Waste Disposal Act of 1991, Tenn. Code Ann. § 68-211-801 *et seq.* and the Jackson Law, Tenn. Code Ann. § 68-211-701 *et seq.*, which provide the standards under which a local government in Tennessee can act to prevent the construction of a new solid waste disposal or processing facility within its boundaries.

The Jackson Law, Tenn. Code Ann. § 68-211-701 *et seq.*, requires that parties seeking to construct a new landfill for solid waste disposal or for solid waste processing in a county or municipality that has opted in to the law must submit construction plans to and obtain local approval from the appropriate municipal or legislative body before commencing construction of the project. Tenn. Code Ann. § 68-211-701. The Jackson Law also requires the appropriate local legislative body to provide public notice of the proposed landfill, take written comments, and hold a public hearing if there is sufficient interest. Tenn. Code Ann. § 68-211-703. After there has been notice and opportunity for a public hearing, the local legislative body must approve or disapprove the project taking into consideration certain specific criteria in the law, which deal with such considerations as the type of waste being disposed, method of disposal, and impact on the local community. Tenn. Code Ann. § 68-211-704. The Jackson Law “affects all citizens in all counties and municipalities of the State.” *Profill Dev. Inc. v. Dills*, 960 S.W.2d 17, 32 (Tenn. Ct. App. 1997)

The proposed private act in this case creates a different program for local approval of the construction of new solid waste landfills in Lewis County and as a result is clearly inconsistent with the Jackson Law. Under the Jackson Law, a local legislative body must approve or disapprove of a proposed new solid waste landfill based solely on specific criteria in the statute. Tenn. Code Ann. § 68-211-704. These statutory criteria do not include any consideration of whether the individual or entity proposing the solid waste landfill is located within the county where the landfill is proposed to be constructed. The proposed private act conflicts with the process established in the Jackson Law because it prevents the construction of any new solid waste landfill within Lewis County based solely on the fact that the person or entity proposing the landfill resides outside of Lewis County. The private act does require the county to consider the same criteria as the Jackson Law does but only when considering the application of an individual or business located within Lewis County. By prohibiting applicants of a proposed landfill from obtaining a permit solely because they are located outside of Lewis County and by only applying the equivalent Jackson criteria to applicants residing within Lewis County, the proposed private act is clearly inconsistent with and contravenes the Jackson Law.

The proposed private act also contravenes the Solid Waste Management Act of 1991, Tenn. Code Ann. § 68-221-801 *et seq.* (SWMA). One of the goals of the SWMA is “to institute

and maintain a comprehensive, integrated, state-wide program for solid waste management.” Tenn. Code Ann. § 68-221-803. The SWMA, along with several other laws in Tennessee, creates “a uniform state policy on the subject of the disposal of solid waste applicable to all local governments.” *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 414 (Tenn. 1997). The SWMA provides an additional way for local governments to control the construction of new solid waste landfills within a county or municipality. It requires that municipal solid waste regions be established, which are to consist of one county or two or more contiguous counties. Tenn. Code Ann. § 68-211-813. Lewis County is a single county solid waste region under the SWMA. The SWMA also requires each region to submit a plan for approval to the Tennessee Department of Environment and Conservation (TDEC), which must be consistent with the state plan established under Tenn. Code Ann. § 68-211-603. Tenn. Code Ann. § 68-211-813. The SWMA also provides that solid waste regions can disapprove of an application for construction of a new solid waste landfill or the expansion of a landfill within the region only if it is “inconsistent with the solid waste management plan adopted by the county or region and approved by the department.” Tenn. Code Ann. § 68-211-814(b)(1)(B). The proposed private act establishes a program that is inconsistent with the program established by the SWMA because it automatically prohibits permits for construction of new solid waste landfills by applicants located outside of Lewis County without taking into consideration whether the proposed landfill would be consistent with the region’s approved plan.

2. The proposed public act would be considered unconstitutional because it violates Article XI, Section 8, of the Tennessee Constitution. Article XI, Section 8, provides that “[t]he Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land.” Tenn. Const. art. XI, § 8. “Tennessee courts have interpreted Article XI, section 8 as prohibiting the general assembly from passing laws that affect the rights of citizens without affecting others in like condition elsewhere in the State.” *Profill Dev. Inc. v. Dills*, 960 S.W.2d 17, 32 (Tenn. Ct. App. 1997) (citations omitted). In order for there to be a potential violation of Article XI, Section 8, a private act must contravene a general law that has mandatory statewide application. *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992). If a private act does contravene general law and there is no reasonable basis for the private act, it will be declared invalid. *Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973).

In *City of Tullahoma v. Bedford County*, 938 S.W.2d 408 (Tenn. 1997), the General Assembly passed a private act which gave Bedford County the right to require payment of a fee for the right to dispose of solid waste at landfills within the county. *Id.* at 411. The court found that there was no reasonable basis from the record showing why Bedford County was being excepted from the general law. *Id.* at 412. The court also noted that the Tennessee General Assembly had passed the SMWA, which regulated the collection of fees by counties and municipalities related to the control and disposal of solid waste. *Id.* at 413. The court further found that the fee charged by the private act did not conform with the statutory conditions for imposing fees established under the SWMA. *Id.* Based on these considerations, the court determined that the SWMA was obligatory general law and that the private act was not consistent with the general law. *Id.* at 414. Because the private action was inconsistent with the general law, the court held that the private act was invalid. *Id.* at 415.

Like the proposed private act in *City of Tullahoma*, in this case, there is no reasonable or rational basis in the private act for treating Lewis County differently from other counties in Tennessee. The SWMA and the Jackson Law are laws of general application that provide a comprehensive uniform statewide program controlling when and how local governments can approve or disapprove the construction of new solid waste landfills within their boundaries. The proposed private act prohibits the construction of new landfills in Lewis County based solely on whether the applicant is a resident of Lewis County. This approach is in direct conflict with the Jackson Law, which requires local governments to consider statutory factors dealing with the type of waste, method of disposal, and impact on the local community, regardless of where the applicant for the project is located. Likewise, the private act is inconsistent with the SWMA, because it does not require the local government to make its decision in consideration of whether it is consistent with the plan adopted by the local solid waste region and approved by TDEC as required by the SWMA. Because the proposed private act is inconsistent with general law and because there is no rational basis for the classification in the proposed private act, it is the opinion of this Office that the proposed private act would be considered unconstitutional under Article XI, Section 8, of the Tennessee Constitution.

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