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Opinion No. 13-81

Solid Waste Management Fees

QUESTIONS

1. Because a recovered materials processing facility is not a solid waste processing facility pursuant to Tenn. Code Ann. § 68-211-802(a)(14), does a county or municipality have the authority to impose a "tipping fee" or "waste generator fee" on recycling processes?

2. Would an ordinance imposing a fee on the grinding or shredding of unpainted, unstained, and untreated wood into mulch or other useful products be consistent with the definition of "solid waste processing" under Tenn. Code Ann. § 68-211-103(10)?

OPINIONS

1. No. A county or municipality does not have the authority under the Solid Waste Management Act of 1991, codified at Tenn. Code Ann. §§ 68-211-801 to -874, to impose a tipping fee or solid waste disposal fee on recycling processes because the tipping fee and solid waste disposal fee are intended only for solid waste disposed at a facility.

2. No. The Solid Waste Disposal Act, codified at Tenn. Code Ann. §§ 68-211-101 to -124, does not authorize a fee for the grinding or shredding of unpainted, unstained, and untreated products, and therefore a fee on such activities would be inconsistent with that Act.

ANALYSIS

1. The General Assembly has enacted comprehensive legislation regarding the control of solid waste, including the Solid Waste Disposal Act, Tenn. Code Ann. §§ 68-211-101 to -124; the Solid Waste Planning and Recovery Act, Tenn. Code Ann. §§ 68-211-601 to -608; the Solid Waste Management Act of 1991, Tenn. Code Ann. §§ 68-211-801 to -874; and the Solid Waste Authority Act of 1991, Tenn. Code Ann. §§ 68-211-901 to -925. "These statutes regulate all aspects of solid waste management, they control facilities operated by private persons and public agencies, they mandate uniformity, they specifically limit the means of generating revenue, and they require that all revenue received by the state and local governments be used only for solid waste management purposes." City of Tullahoma v. Bedford County, 938 S.W.2d 408, 413 (Tenn. 1997).

Under the Solid Waste Management Act of 1991 (hereinafter "Part 8"), fees can be imposed pursuant to Tenn. Code Ann. § 68-211-835. A county or municipality that owns a municipal solid waste disposal facility or incinerator may impose a tipping fee upon each ton of municipal solid waste or its volume equivalent received at the facility. Tenn. Code Ann. § 68-211-835(a). The tipping fee is imposed only on disposal facilities.

Recycling necessarily involves recovered materials, not the disposal of solid waste as defined by Tennessee law. *See* Tenn. Code Ann. § 68-211-802(a)(16) (defining "recycling" as "the process by which recovered materials are transformed into new products, including the collection, separation, processing and reuse of recovered materials either directly or as raw materials for the manufacture of new products.") Recovered materials are defined as "those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not requiring subsequent separation processing," and "[s]uch recovered materials are not solid waste." Tenn. Code Ann. § 68-211-802(a)(13). A recovered materials processing facility is "a facility engaged solely in the storage, processing and resale or reuse of recovered materials." Tenn. Code Ann. § 68-211-802(a)(14). It is not a solid waste processing facility. *Id*. Furthermore, because recovered materials are not solid waste, a recovered materials processing facility is also not a solid waste disposal facility. *Compare* Tenn. Code Ann. §§ 68-211-102(8)–(10) (defining "solid waste," "solid disposal," and "solid waste processing,") *with* Tenn. Code Ann. § 68-211-802(a)(14) (stating a "recovered materials processing facility is not a solid waste processing facility"). Therefore, a county or municipality cannot impose a tipping fee on a recovered materials processing facility. It necessarily follows that a county or municipality cannot impose such a fee on recycling processes.

Nor does Part 8 provide for a "waste generator fee." The Tennessee Hazardous Waste Management Act of 1977 provides for a fee for hazardous waste generators under Tenn. Code Ann. § 68-212-110(a), but the present inquiry concerns solid waste. Part 8 does provide for a solid waste disposal fee under Tenn. Code Ann. § 68-211-835(g) and for various surcharges throughout the statute. However, in these instances, the fees and surcharges are for the disposal of solid waste. Again, "[r]ecovered materials are not solid waste." Tenn. Code Ann. § 68-211-802(a)(13). Thus, Tenn. Code Ann. § 68-211-835 does not authorize counties and municipalities to impose a fee or surcharge on the generation of recovered materials, which would include recycling processes. Furthermore, such a fee or surcharge would be inconsistent with Part 8.

Finally, Part 8 is intended to establish "a comprehensive, integrated, statewide program for solid waste management . . . [and] to the extent feasible and practicable, make[ ] maximum utilization of the resources contained in solid waste." Tenn. Code Ann. § 68-211-803(a). Part 8 also is intended to minimize "through source reduction, reuse, composting, recycling and other methods" the amount of solid waste disposed and to "promote markets for . . . goods from recovered materials and goods which are recyclable." Tenn. Code Ann. § 68-211-803(b) and (c). A tipping fee or generator fee on recycling processes could discourage such recycling efforts and would be inconsistent with the Part 8 purposes to promote recycling.

2. Under the Tennessee Solid Waste Disposal Act, the definition of "solid waste processing" provides for "any process that modifies the characteristics or properties of solid

waste, including but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products." Tenn. Code Ann. § 68-211-103(10).

The activity in question (recycling wood waste into mulch or other useful products) is specifically excluded from this definition. This type of recycling activity is not "solid waste processing." This is consistent with the language noted above from Tenn. Code Ann. § 68-211-802(a)(14) that a "recovered materials processing facility is not a solid waste processing facility." Thus, imposing a fee under Tenn. Code Ann. § 68-211-835(a) for the grinding or shredding of unpainted, unstained, and untreated products would be inconsistent with the definition of "solid waste processing" under Tenn. Code Ann. § 68-211-103(10) and with Part 8.

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