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ATTORNEY GENERAL
STATE OF ILLINOIS

June 9, 1994

FILE NO. 94-018

ENVIRONMENTAL PROTECTION:
Use of Fees Charged Applicants for
Regional Pollution Control Facilities

Honorable Joseph R. Navarro
State's Attorney, LaSalle County
707 Etna Road, Room 251
Ottawa, Illinois 61350

Dear Mr. Navarro:

I have your letter wherein you inquire whether a county may, in the course of local siting review for regional pollution control facilities, provide for the payment of certain costs of intervening parties from the application fee authorized by subsection 39.2(k) of the Environmental Protection Act (415 ILCS 5/39.2(k) (West 1992)). For the reasons hereinafter stated, it is my opinion that a county does not have the authority to require applicants for local siting review to pay fees which will be used to defray the expenses of intervening parties.

Section 39.2 of the Environmental Protection Act (415 ILCS 5/39.2 (West 1992)) provides, in pertinent part:

> "(a) The county board of the county or the governing body of the municipality, as

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> determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each regional pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:
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> * * *
>
> (k) A county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.
>
> * * * "

Section 39.2 of the Act provides the exclusive authority by which a county may act in the local siting review process. (Concerned Boone Citizens v. M.I.G. Investments (1986), 144 Ill. App. 3d 334, 340-41.) The section does not expressly authorize a county to subsidize the efforts of intervenors, or to require an applicant to do so.

The primary object of statutory interpretation is to give effect to the intent of the legislature, and the inquiry into legislative intent must begin with the language of the statute. (People v. Lowe (1992), 153 Ill. 2d 195, 201.) In ascertaining legislative intent, the reason and necessity for the law, the evils to be remedied and objects and purposes to be

obtained may also be considered. People v. Haywood (1987), 118 Ill. 2d 263, 270-71.

The plain language of subsection 39.2(k) permits a county to charge a fee to cover the "reasonable and necessary costs incurred by such county" in the siting review process. This is specific language which does not include costs which are incurred by parties to the process other than the county. Indeed, it does not necessarily include all possible costs which a county may incur, but only those costs which are deemed to be both reasonable and necessary. Although an intervening party may from time to time bring useful information to a siting review process, there is no basis upon which a county may require an applicant to bear the cost related thereto.

Moreover, the legislative history of subsection 39.2(k) supports the conclusion that it was not intended to permit a county to require an applicant to contribute toward payment of the expenses of intervenors. Subsection 39.2(k) was added by Public Act 84-1320, effective September 4, 1986, specifically in response to appellate court rulings that section 39.2 did not grant a county board the power to impose fees upon applicants. (Remarks of Sen. Welch, July 1, 1986, Senate Debate on Senate Bill No. 2117, at 113-14). The concern expressed by the sponsor of the amendment, and which had been raised by the court rulings, was narrowly focused upon defraying the actual costs of the

county or municipal government related to collecting data and holding hearings necessary to reach a determination on the siting review.

In the first of the cases, County of Lake v. Pollution Control Board (1983), 120 Ill. App. 3d 89, the county had attempted to require the applicant to pay the costs of a county health department inspection associated with a landfill. The court held that such a fee was not a reasonable and necessary condition for the county to carry out the purposes of section 39.2. Subsequently, in Concerned Boone Citizens v. M.I.G. Investments (1986), 144 Ill. App. 3d 334, the court struck down a county ordinance which imposed a filing fee for applications for approval of regional pollution control facilities. The ordinance had specifically provided that the fee was to be used to defray the county's costs in employing experts and holding hearings, with any balance to be refunded to the applicant.

Nowhere in these cases, in the debates on the amendment or in the language of the statute itself is there any suggestion that a county might properly use application fees to defray the costs of third parties in the siting review process. The cases cited above make it clear that such authority was not implicit prior to the enactment of subsection 39.2(k). The analysis in those cases indicates that the powers which were expressly granted to counties in section 39.2 should not be construed to

imply powers not necessary to accomplish the purposes of the section. Therefore, it is my opinion that absent statutory authorization therefor, counties do not have the power, either express or implied, to use any part of an application fee imposed pursuant to section 39.2(k) to defray the expenses of intervenors in the siting review process.

Respectfully yours,

ROLAND W. BURRIS
ATTORNEY GENERAL