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Solid Waste/Recycling Facilities: Do Illinois Counties and Municipalities Have Statutory and Home Rule Authority to Enact Ordinances Regulating Waste Management?

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The National Waste and Recycling Association ("Association") filed in April of 2014, a Complaint in the Circuit Court of Cook County, Illinois, challenging the Cook County Board of Commissioners' ("Board") authority to enact various provisions regulating the management of solid waste.

The Association is a not-for-profit trade association that represents for-profit waste and recycling companies.

The challenged provisions are found in the Cook County Solid Waste and Recycling Ordinance ("SWRO"). Cook County Code of Ordinances § 30-776 to -781 (approved January 15, 2014). The SWRO imposes fees, reporting and other requirements on the operators of solid waste and recycling facilities within Cook County.

On May 26th the Illinois Court of Appeals issued an opinion affirming the Circuit Court's determination that the Board possessed authority to enact the ordinance, and therefore that the SWRO is enforceable. See *Nat'l Waste & Recycling Ass'n v. Cty. of Cook*, 2016 IL App (1st) 143694.

The Association argued on appeal that the Board lacked either statutory or home rule authority to enact the regulatory provisions. This argument was largely premised on a claim that the management of solid waste was a regional and statewide problem traditionally regulated at the state level. In support of its position, the Association cited the Illinois Environmental Protection Act, which calls for the establishment of "a unified state-wide program for environmental protection." 415 ILCS 5/2(a)(ii).

The Court of Appeals found the Association's statutory argument lacked merit in light of relevant language from the state's Solid Waste Planning and Recycling Act ("Act"), pursuant to which the SWRO was enacted. 415 ILCS 15/1 to 15/13. The Act provides in part that its purpose is "to require certain counties to develop comprehensive waste management plans that place substantial emphasis on recycling and other alternative to landfills," and expressly provides that "counties should have the primary responsibility to plan for the management of municipal waste within their boundaries."

The Act imposes on Illinois counties responsibility for adopting a plan to manage municipal waste generated within their borders. The plan must be submitted to the Illinois Environmental Protection Agency for review. The Act directs counties to include certain information in these plans. Such information includes the origin, content, and weight of waste generated.

Further, to comply with the Act, counties must include in their plan a recycling program. A requirement of such programs is that they be designed to recycle, by the end of the third and fifth years of the program, respectively 15% and 25% of the municipal waste generated in the county.

The previously referenced portions of the Act persuaded the Court of Appeals to reject the Association's argument that the Board lacked the statutory authority to enact the SWRO. The legislature required counties to develop waste management plans providing minimal direction. Consequently, the court found that the Act manifested a belief held by the legislature that counties are in a better position to address the issues posed by an "inadequate and rapidly diminishing waste disposal capacity" Accordingly, the court held that the Board had not encroached on state regulation of waste management when it enacted the "extensive reporting requirements" and other challenged provisions of the SWRO. Instead, it acted well within its authority under the Solid Waste Act.

The Association also challenged the Board's authority to enact the SWRO arguing it lacked home rule authority. After acknowledging that its decision on the statutory authority issue was sufficient to dispose of the case, the court nonetheless addressed the Association's home rule theory stating that its argument, "[was] largely grounded in what [was], at best, a flawed analysis of home rule authority."

Article Seven, Section Six of the Illinois Constitution defines both what a home rule unit is, and the scope of its authority, stating:

A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units . . . [A] home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

No legislation preempted the county's ability to regulate in the area of waste management. Therefore, the court determined that the Association's argument hinged on whether the subject of waste management pertained to the county's government and affairs. In Illinois, there is an established, multi-factor test used for determining whether a particular problem is statewide in nature or instead local.

Facts which led the court to believe that the subject of waste management is of a local dimension were: waste being processed within the county created problems for county residents and businesses such as increased traffic, odors, debris, dust, and vermin; that the Solid Waste Act expressed a clear belief by the legislature that counties have the most interest in solving waste management problems; and finally, that since the passage of the Solid Waste Act in 1988, it has been primarily the responsibility of counties to address local waste management concerns. The court reaffirmed prior Illinois decisions that counties have the ability to legislate concurrently with state government on environmental control issues, pursuant to their home rule powers. *See Cook Cty. v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 389 N.E.2d 553 (1979)

Finally, the Association put forth three reasons why, even if the county had some home rule authority to regulate solid waste management, it exceeded that authority in enacting the SWRO. Of these three arguments, one alleged that the SWRO was improper because it had extraterritorial effects outside the home unit. Notwithstanding an affidavit by the county's solid waste coordinator stating that at times waste from outside Cook County was transferred to solid waste facilities within its borders, because the SWRO only sought to regulate facilities located within the county, the court rejected the Association's argument.

National Waste & Recycling arguably stands for the proposition that, in Illinois, it is permissible for both local and state government to concurrently regulate the management of solid waste, if counties or municipalities do not act outside the liberally construed scope of their authority.

[A copy of the decision can be downloaded here.](#)