

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 88-27

Date Issued: December 19, 1988
Requested by: Senator Jerry Waldera

- QUESTION PRESENTED -

Whether the transportation of saltwater produced by oil and gas wells is exempt from the Public Service Commission's authority under N. D. C. C. ch. 49-18.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that saltwater produced by oil and gas wells is not exempt from the Public Service Commission's authority under N. D. C. C. ch. 49-18.

- ANALYSIS -

Saltwater is produced along with the production of oil and gas. Because it is environmentally hazardous, saltwater requires careful disposal by injection into particular underground formations. While most saltwater is disposed of in this way, some of it is used as a valuable substance in oil and gas operations (e. g., secondary recovery programs).

While saltwater can be transported to injection wells by pipeline, it is normally carried by truck. The question is whether those who transport saltwater fall within the jurisdiction given the Public Service Commission (PSC) in N. D. C. C. ch. 49-18. In particular, does the transportation of saltwater fall within N. D. C. C. § 49-18-02(13), which exempts from PSC regulation the "transportation of rubbish or garbage"?

In its most recent decision on the subject, the PSC decided that saltwater is neither rubbish nor garbage and, therefore, that it has authority to regulate the transportation of saltwater.

An administrative agency's interpretation of its statutes is entitled to respect. Courts often defer to an agency's understanding of its governing statutes and rules. See Bottineau County Resource Dist. v. North Dakota Wildlife Soc'y, 424 N. W. 2d 894, 900 (N. D. 1988). Quarles v. McKenzie Pub. School Dist. No. 34, 325 N. W. 2d 662, 670 (N. D. 1982); Dameron v. Neumann Bros., Inc., 339 N. W. 2d 160, 162 (Iowa 1983). One current member of the court

has gone further and said that "great weight" should be given to agency interpretations. Imperial Oil of North Dakota, Inc. v. Industrial Comm'n, 406 N.W.2d 700, 704 (N.D. 1987) (Meschke, J., dissenting). Administrative interpretations receive this respect even if the interpretation changes from time to time. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 863-64 (1984).

Legislative history supports the PSC's interpretation. The legislative history of House Bill No. 1138 (the 1981 bill that proposed exempting the "transportation of rubbish or garbage" from the PSC's jurisdiction under N.D.C.C. ch. 49-18) contains the prepared statement of Ray Walton, the PSC's commerce counsel, who spoke in support of the bill. His testimony is the only evidence of the purposes and policies of the bill. Mr. Walton said the bill was "not a deregulation bill." Hearings on H. 1138 Before the House Committee on Transportation, 47th Leg., (January 15, 1981) (statement of R. Walton). Thus, the exemptions contained in House Bill No. 1138 were not new.

Since the PSC had been regulating saltwater haulage before 1981, the "rubbish or garbage" exemption enacted in 1981 was not intended to include saltwater and thereby exempt an activity the PSC had been regulating for many years.

The PCS has decided that the transportation of saltwater is within its jurisdiction. Not only is this decision supported by the legislative history surrounding the enactment of House Bill No. 1138, but, as an agency decision, the decision is itself entitled to respect.

See Eklund Bros. Transport, Inc., v. Ritts, 148 N.W.2d 263, 266 (N.D. 1966); In the Matter of the Application of Black Hills Trucking, Inc., Casper, Wyoming, for an Extension of Special Certificate of Public Convenience and Necessity No. 998, PSC Case No. S-2157, Sub. 1 (May 5, 1980); In the Matter of the Application of Jim's Roustabout Service, Belfield, North Dakota, for a Special Certificate of Public Convenience and Necessity, PSC Case No. S-2199 (Apr. 22, 1980).

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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