

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-13

Date Issued: August 24, 1993  
Requested by: Mr. Timothy C. Wilhelm  
Ward County Assistant State's Attorney

- QUESTION PRESENTED -

Whether House Bill 1057 authorizes townships to impose tipping fees.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that House Bill 1057 does not authorize townships to impose tipping fees. However, it is my further opinion that townships have the authority to impose reasonable tipping fees through existing statutory authority.

- ANALYSIS -

The portion of House Bill 1057 which relates to zoning for solid waste disposal facilities amended N.D.C.C. ? 11-33-01 to include the following language:

The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities.

This section applies only to county zoning and tipping fees and does not impact the zoning jurisdiction of townships.

The authority for townships to impose reasonable tipping fees is inherent in their ability to adopt zoning regulations as described in N.D.C.C. ?? 58-03-11 through 58-03-15. Note, that a portion of N.D.C.C. ? 58-03-11 limits the ability of townships to use zoning authority for establishment, repair, or maintenance of roads:

The provisions of sections 58-03-11 through 58-03-15, shall not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

N.D.C.C. ch. 58-03 (Powers of Township and of Electors of the Township) does not specifically enumerate regulation of solid waste as one of the powers granted to electors within townships or to township boards. However, N.D.C.C. ch. 23-29 (Solid Waste Management and Land Protection Act) does grant such specific authority. N.D.C.C. ? 23-29-05 states:

**23-29-05. Local government ordinances.** Any political subdivision of the state may enact and enforce a solid waste management ordinance if such ordinance is equal to or more stringent than this chapter and the rules adopted pursuant to this chapter.

A township is a political subdivision within the context of N.D.C.C. ? 23-29-05. N.D.C.C. ? 23-29-03(12). N.D.C.C. ? 58-03-07 grants township electors the authority to make regulations necessary to effect township powers.

**58-03-07. Powers of electors.** The electors of each township have the power at the annual township meeting:

. . .

6. To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers granted to the township.

Therefore, through the authority specifically referenced in N.D.C.C. ? 23-29-05, townships may impose reasonable tipping fees on solid waste management facilities through proper adoption of solid waste management ordinances or regulations.

This activity would be in addition to the zoning authority granted in N.D.C.C. ch. 58-03.

It is therefore my opinion that a township may rely on both its zoning authority and the specific authority granted it in N.D.C.C. ? 23-29-05 to provide for tipping fees.

- 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

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question presented is decided by the courts.

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ATTORNEY GENERAL

Assisted by: William J. Delmore  
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