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File No. S-633

HEALTH:
Pollution -
Leaf burning

Mr. Jacob D. Dumelle
Chairman
Pollution Control Board
309 W. Washington
Chicago, Illinois 60606

Dear Chairman Dumelle:

Your letter of September 18, 1973, requesting my opinion concerning the effect of House Bill 14, hereinafter Public Act 78-243, recently passed by the 78th General Assembly and signed on August 13, 1973, was forwarded to me by the Governor's Office and received on September 21, 1973.

Public Act 78-243, which became effective October 1st of this year, amends Section 10 of the Environmental Protection Act (Ill. Rev. Stats., ch. 111 1/2, §1001 et seq.) and reads, in pertinent part:

"The Board may not adopt any regulation banning the burning of leaves throughout the State generally. The Board may, by regulation, restrict or prohibit the burning of leaves within any geographical area of the State if it determines based on medical and biological evidence generally accepted by the scientific community that such burning will produce in the atmosphere of that geographical area contaminants in sufficient quantities and of such characteristics and duration as to be injurious to humans, plant, or animal life, or health."

In light of this provision, you seek my opinion on the following question:

"Is the Board regulation now in effect (Rules 501 through 506, inclusive, of Chapter 2, adopted November 8, 1972, in R 72-11) and will it still be in full force and effect until such time as the Board modifies it?"

I have examined the rules and regulations of the Board cited in your letter and note that the burning of leaves and other landscape wastes is governed specifically by Rules 502(a) and 503(c). In particular, 503(c) (4) prohibits the burning of landscape wastes in any of the following areas:

- "(i) municipalities having a population in excess of 2,500 according to the latest Federal census.
- (ii) municipalities of any size which adjoin a municipality having a population in excess of 2,500.
- (iii) all municipalities wholly within 40 air miles of Meigs Field, Chicago, Illinois.

- (iv) all municipalities wholly within 20 air miles of McKinley Bridge connecting St. Louis, Missouri and Venice, Illinois.
- (v) rural areas 1,000 feet or less from a municipality in which open burning of landscape waste is prohibited."

It appears from your opinion of November 28, 1972, which announced the adoption of the foregoing regulations, that approximately 95% of the State's population is prohibited from disposing of landscape waste by open burning (opinion, P.10).

In my opinion, the scope of the present prohibition against the open burning of landscape wastes constitutes a ban on "the burning of leaves throughout the State generally." An analysis of Public Act 78-243 leads me to this conclusion. Had the General Assembly intended only to prohibit the Pollution Control Board from adopting a regulation prohibiting the burning of leaves throughout the State and covering 100% of the citizenry, they could have done so very simply by ending the first amendatory sentence after the word "State". But they did not do so. The word "generally" was added, which is synonymous with "for the most part" (Webster's Third New International Dictionary). The addition of that word places Public Act 78-243 in conflict with existing Board regulation.

In addition, it should be noted that while Public Act 78-243 permits regulations banning the burning of leaves within "geographical areas) " of the State after certain medical and biological facts are established, present regulations in the main are written along population cutoff points, treating all municipalities of the same size identically regardless of any differences between them. In this respect, the current regulations cannot be harmonized with Public Act 78-243.

For these reasons, I conclude that Public Act 78-243 is in conflict with the current regulations of the Pollution Control Board regulating open burning. The conflict runs only to leaves and not other forms of landscape waste or refuse. Therefore, the specific impact of Public Act 78-243 is to exclude "leaves" from the definition of "landscape waste" currently found in Rule 501(d).

Parenthetically, I would call your attention to Section 9(c) of the Environmental Protection Act which prohibits any open burning unless permitted by Board regulation. Because I have concluded that Public Act 78-243 effectively "deregulates" the burning of leaves, it might be suggested that a statewide ban against such burning

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automatically attaches by operation of Section 9(c). This is not the case. Section 9(c) is a broad prohibition of open burning and, as such, constitutes general legislation. It is the clear intention of the General Assembly in Public Act 78-243 that the burning of leaves is to be permitted. This specific legislation takes precedence over the general provision of Section 9(c) (City of Chicago v. Chicago Great Western R. Co., 348 Ill. 193, 180 N.E. 835; Mills v. Winnebago County, 104 Ill. App. 2d 366, 244 N.E. 2d65).

Very truly yours,

A T T O R N E Y G E N E R A L