

January 27, 1997
FOR PUBLICATION

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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|---------------------------------|----------------------------------|
| THE CITY OF TULLAHOMA, | (|
| TENNESSEE, AND THE CITY OF | (|
| SHELBYVILLE, TENNESSEE, ET AL., | (|
| | (Bedford Chancery |
| Plaintiffs-Appellants, | (|
| | (Hon. Cornelia A. Clark, Judge |
| v. | (|
| | (Appeal No. 01S01-9511-CH-00208 |
| BEDFORD COUNTY, TENNESSEE, AND | (|
| KATHY K. PRATER, COUNTY CLERK, | (|
| BEDFORD COUNTY, TENNESSEE, | (|
| | (|
| Defendants-Appellees. | (|

FILED

January 27, 1997

Cecil W. Crowson
Appellate Court Clerk

O R D E R

In reaction to the Court's decision that Chapter 52 of the Private Acts of 1991 is inconsistent with general laws which mandate a comprehensive plan for the control of solid waste and is, therefore, invalid, Bedford County and the county clerk have filed a petition to rehear, the City of Tullahoma, et al. have filed a motion for clarification regarding the relief to which they are entitled and the Attorney General and the Commissioner of Environment and Conservation have filed a motion seeking permission to file an amicus brief on the petitions, all of which have been granted and are before the Court for consideration.

The petition of Bedford County and the clerk insists that the Court erred in finding that the private act

is impermissible class legislation. Their reliance for their position is the fact that the private act was enacted prior to the enactment of the Solid Waste Management Act. Priority of enactment is not determinative. Bedford County and the clerk do not deny the validity of the Solid Waste Management Act and the several other statutes which set forth a uniform statewide policy regarding the disposition of solid waste. Therefore, the only issue is whether the private act is inconsistent with the general law within the meaning of Article XI, Section 8 of the Tennessee Constitution. That issue is discussed adequately in the opinion.

The petition filed by the City of Tullahoma, et al. seeks instructions for further proceedings in the trial court on remand. The only issue presented on the motion for summary judgment was the validity of the private act, and that is the only issue decided by the Court. The only relief to which the appellants are entitled at this stage of the proceedings is the declaration that the private act is invalid. The appellants' contention that they are entitled to certain relief, including a refund of all funds collected pursuant to the provisions of the private act, has not been considered by the trial court and is not properly before this Court for review.

The amicus brief filed by the Attorney General and the Commissioner does not challenge the decision that chapter 52 of the 1991 Private Acts violates the equal protection

provisions of the Tennessee Constitution. It does, however, request clarification of an inaccurate statement made by the author of the opinion. In the discussion of the authority of local governments to impose and collect tipping fees pursuant to Tenn. Code Ann. § 68-211-835, the Court stated: "There is no provision in any statute authorizing local governments to impose additional fees." A correct statement is: "There is no provision in any statute authorizing Bedford County to impose additional fees by the procedure followed in this case." However, proper treatment of the point can best be accomplished by revising the paragraph in which that statement is made, as follows:

The imposition, collection, and use of fees by counties and municipalities incident to the control and disposition of solid waste is authorized and regulated by Tenn. Code Ann. § 68-211-835. Even though the purposes for which the charges imposed pursuant to the private act are not inconsistent with the purposes of the Solid Waste Management Act, those charges may be imposed only as authorized by general law. The statute provides that only local governments and solid waste authorities may impose county fees, and then, only when statutory conditions are met. The charges in this case were authorized by the General Assembly, not by local government, and they do not conform to the statutory conditions.¹

¹The charges are not authorized by subsection (a) because Bedford County does not own the disposal facility; they are not authorized by subsection (e) because the record does not show that Bedford County is a host county to a

The original opinion filed in this case will be withdrawn and a revised opinion, a copy of which is attached hereto, will be filed.

Costs are taxed in the revised opinion.

Reid, J.

Concur:

Birch, C.J., Drowota, and
Anderson, JJ.

White, J. - Not participating.

"regional" solid waste disposal facility; they are not authorized by subsection (f) because the record does not show the proceeds were used for solid waste collection and disposal or that a regional solid waste plan had been approved for Bedford County; nor are the charges authorized by subsection (g) because the record does not show the proceeds were used only for collection and disposal services to which all residents of the county had access. There is no contention that the charges are authorized pursuant to Title 5 of the Code.