



**THE ATTORNEY GENERAL
OF TEXAS**

February 14, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Ralph R. Wallace, III
Chairman
Cultural & Historical Resources Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-89-13

Dear Representative Wallace:

I have reviewed your question concerning the necessity of a public hearing on the transfer of a permit issued under the Solid Waste Disposal Act. See V.T.C.S. art. 4477-7. In talking with Ms. Ann Pittcock of your staff, I understand that your question is prompted by language found in a regulation adopted by the Department of Health.

Section 4(e)(4) of the act requires opportunity for a public hearing before the issuance, amendment, extension, or renewal of a permit. In regard to a transfer of an issued permit, however, section 4(e)(7) states:

A permit issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A permit may not be transferred without prior written notice to and prior written approval by the state agency which issued it.

The Department of Health has adopted regulations for procedures regarding a request for a transfer. These requirements, found in 25 T.A.C. section 325.55, implement the statutory mandate for the agency's prior approval to effect a transfer.

You ask whether another regulation (25 T.A.C. section 325.91) imposes a public hearing requirement on the transfer application process. That regulation provides in part:

§325.91. General.

The chief of the bureau is responsible for accomplishing all departmental actions necessary for the processing, technical evaluation of permit applications, and referral to the Office of General Counsel for issuance of a notice of opportunity for a public hearing or scheduling of the public hearing. The chief of the bureau or his designated representative will be designated a party in accordance with the Administrative Procedure and Texas Register Act in all cases and will submit a recommendation for approval or denial of applications for permits, or for their renewal, amendment, or transfer.

In response to your question, the Department of Health has written a letter to this office explaining the department's understanding that section 4(e)(7) of the act does not require a public hearing for a transfer. (A copy of the department's letter is enclosed). The department's letter makes it clear that the regulation about which you inquire was not intended to suggest the necessity for a hearing and that hearings are not conducted on transfer applications. In our opinion, the act neither requires nor authorizes a public hearing on a permit transfer. According to our reading of the department's regulations, they do not do so either.

As I discussed with Ms. Pittcock, if you think a public hearing requirement should be added to the transfer process, you may want to introduce legislation amending section 4(e)(7) of the act.

Very truly yours,


Karen C. Gladney
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

KCG/er
Enclosure
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