



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

August 16, 1996

The Honorable J. E. "Buster" Brown
Chair, Natural Resources Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 96-089

Re: Whether the Texas Natural Resources Conservation Commission may award a grant to a tire recycling facility constructed prior to the effective date of Senate Bill 776, Act of May, 29, 1995, 74th Leg., R.S., ch. 317, 1995 Tex. Sess. Law Serv. 2723 (ID# 38952)

Dear Senator Brown:

You ask whether, pursuant to Senate Bill 776, a grant may be awarded to a recycling facility constructed prior to the bill's effective date, September 1, 1995. We believe that it may.

The Seventy-fourth Legislature adopted Senate Bill 776, which relates generally to waste tire recycling, and the bill was approved June 5, 1995. Its effective date was September 1, 1995. The bill provides, *inter alia*, that the Texas Natural Resource Conservation Commission ("TNRCC") may use the waste tire recycling fund created by section 361.475 of the Health and Safety Code to "provide grants for recycling facility construction costs." Act of May 29, 1995, 74th Leg., R.S., ch. 317, § 6, 1995 Tex. Sess. Law Serv. 2723, 2725. The bill further gives TNRCC rule-making authority to "establish a program for providing grants for the construction of waste tire recycling facilities for the recycling of whole waste tires or shredded tires." *Id.* § 9, 1995 Tex. Sess. Law Serv. at 2729.

Pursuant to this authority, TNRCC published such rules in the Texas Register on March 29, 1996. The relevant rule here is located in volume 30 of the Texas Administrative Code section 330.984(a), which reads in pertinent part:

Grants under this subchapter may be made for the following activities:

- (1) construction of recycling facilities initiated after January 1, 1994 (including ordering of equipment) that beneficially recycle either whole waste tires or shredded tires.

You ask whether "it would be consistent with S.B. 776 for a grant to be awarded to a recycling facility constructed prior to September 1, 1995." Since the statute itself is silent on this question, we will examine the legislative history. We believe that your question should be answered in the affirmative, based upon a "Statement of Legislative Intent" published in the House Journal on May 28, 1995.

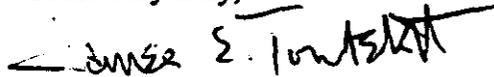
In the "Statement of Legislative Intent," the members of the House Environmental Regulations Committee state, "It is not intended that these recyclers be paid for using tires, or on a per tire basis. *They may be eligible for a reimbursed grant however, if they start building or retrofitting a tire recycling facility before the grant money is provided.*" H.J. of Tex., 74th Leg., at 4476 (1995) (emphasis added.) This indicates the intent of the legislature to apply the statute to construction by recycling facilities which had already begun.

Accordingly, it is the view of this office based on the House Journal entry that the awarding of a grant under Senate Bill 776 to a recycling facility constructed prior to September 1, 1995, is consistent with the bill's intent, and that therefore the TNRCC rule is valid.

S U M M A R Y

The awarding of a grant under Senate Bill 776 to a recycling facility constructed prior to September 1, 1995, is consistent with the bill's intent. The rule promulgated by the Texas Natural Resource Conservation Commission volume 30, section 330.984(a) of the Texas Administrative Code is therefore valid.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee