

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1971

VILLAGE OF GLENDALE HEIGHTS)
)
 v.) PCB#70-8
)
ENVIRONMENTAL PROTECTION AGENCY)

CONCURRING OPINION OF THE BOARD (by Dr. Aldrich)

Comments on Invoking Section 46

This is the second case in which the invocation of Section 46 of the Environmental Protection Act (the power to order municipalities or sanitary districts to issue general obligation or revenue bonds without an election or referendum) has been considered.

I feel that this is a power to be used sparingly by the Pollution Control Board. The new Illinois constitution does not impose any limit on bonded indebtedness and Mr. Kissel in his opinion states: ". . . . it may be that the Board can require bonds to be issued up to any amount."

Invoking Section 46 may in essence substitute the will and judgment of the Board for that of local citizens. This action by the Board should only be taken when one of two conditions is met:

- a) failure to do so would allow citizens of a municipality to pollute the environment of citizens outside the taxing district or,
- b) the political unit is in violation of a law or standard.

As long as the causes and consequences of environmental problems arising from failure to pass bond issues are confined to the same persons, the Board should hesitate to invoke Section 46.

Local citizens have the right, and indeed the duty, to decide the priorities in the uses of their tax revenues. There are many competing uses for tax dollars including welfare assistance, support for education, parks, and recreation. The citizens may even decide to raise less taxes.

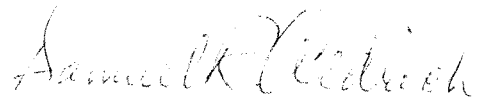
If the PCB invokes Section 46, it must bear responsibility for possible damage to other programs which may be more urgent. It cannot escape that responsibility by saying that the municipality has adequate financial resources for all programs. The city officials have for their allocation only the dollars that are in fact collected.

The argument was advanced orally that infants, the elderly, and persons with certain disease problems may not be adequately protected

without invoking Section 46. It is inconceivable to me that members of any board living entirely outside the community can be as responsive to local needs as the parents, friends, and relatives residing in the community of those with special health problems.

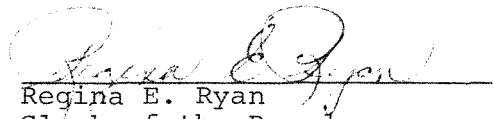
When the priorities of the Pollution Control Board and citizens of the municipality or other political unit are in conflict, the views of local taxpayers should prevail. I regret that this view is not shared by other members of the Board.

In the case of EPA vs. Glendale Heights it appears that the failure to make the improvements in the overall sewer system would damage the quality of downstream water and thus affect persons outside the taxing unit. I, therefore, support the opinion by Mr. Kissel in this case but without prejudice to my view in future cases in which the facts may be somewhat different.




Samuel R. Aldrich
Board Member
Pollution Control Board

I, Regina E. Ryan, do hereby certify that Samuel Aldrich submitted the above concurring opinion this 8th day of March, 1971.



Regina E. Ryan
Clerk of the Board

I Concur



I Dissent
