

ILLINOIS POLLUTION CONTROL BOARD
January 26, 1984

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 76-84
)
 SANTA FE PARK ENTERPRISES, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (By J. Anderson):

On January 4, 1984, Santa Fe moved the Board to "appoint a Special Attorney General to represent the interests of the State of Illinois in upholding the constitutionality of PA 82-654 on appeal from an order of the Board...in the Illinois Appellate Court, First District, under authority of 14 Ill. Ann. Stat. ¶ 6 (sic)" (Motion. p. 1). The Attorney General filed a response in opposition on January 26, 1984, and included a request for attorney's fees for preparation of said response.

In support of its motion, Santa Fe cites Sommer v. Goetze, 102 Ill. App.3d 117 (1981), interpreting Ill. Rev. Stat. ch. 14, par. 6 as authorizing an administrative agency to appoint a special attorney general to represent one party in a proceeding before it. In that case, a Tazewell County deputy sheriff "allegedly exchanged heated words...in an East Peoria tavern" with an assistant state's attorney. The Tazewell County sheriff brought a complaint against his deputy before the Tazewell County Sheriff's Merit Commission, which resulted in the deputy's dismissal. In that disciplinary proceeding, the case was prosecuted on behalf of the sheriff by the assistant state's attorney who had been involved in the altercation with the deputy.

Ill. Rev. Stat. ch. 14, par. 6 provides in pertinent part that

"Whenever the attorney general or state's attorney...is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which said cause or proceeding is pending may appoint some competent attorney to prosecute or defend such cause or proceeding..."

The court noted that appointment of a special State's Attorney is not mandatory, but that "...here, where the assistant State's Attorney was the complainant and key eyewitness, we hold that it was an abuse of discretion to refuse appointment of a disinterested attorney to prosecute the charges brought against [the deputy]", citing People v. Moretti, 349 Ill. App. 67, 109 N.E. 2d 915 (1952).

Santa Fe's reliance on the Sommer case is misplaced, given the circumstances of this action. The Board notes that on January 12, 1984 Santa Fe applied for leave to appeal the Board's September 23, 1983 Order in the Appellate Court, First District in Santa Fe Park Enterprises, Inc V. People and Illinois Pollution Control Board, No. 84-126. Even assuming that the attorney general's advocacy of the unconstitutionality of P.A. 82-654 is the type of "interest" to be avoided by appointment of a special attorney general, the statute clearly provides that only the tribunal hearing the action may make such an appointment. Santa Fe's motion is denied as being beyond the scope of the Board's authority and jurisdiction.

Assuming the Board has authority to entertain it, the Attorney General's request for attorney's fees is denied. While Santa Fe's Motion may have been misguided and misdirected, the Board cannot find that its filing was "in bad faith", as alleged in the Attorney General's Motion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 26th day of January, 1984 by a vote of 7-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board