

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

League of Women Voters)
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) #70-7
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North Shore Sanitary District)
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October 8, 1970

OPINION ON MOTION TO DISMISS

Opinion of the Board (by Mr. Currie):

The League of Women Voters has filed a complaint charging the North Shore Sanitary District with polluting Lake Michigan. The District moves to dismiss the complaint, and we deny the motion.

Under section 31 (b) of the Environmental Protection Act "any person" may file a complaint alleging a violation of the Act or of the regulations, and the Board is required to hold a hearing unless it determines that such complaint is "duplicitous or frivolous." The District argues that the Board lacks jurisdiction of the complaint; that the League lacks standing to sue; that the League has not been authorized by its members to sue; and that the complaint is duplicitous.

The first objection, that of lack of jurisdiction, appears to be based upon the other three objections, as no independent reasons are suggested for this position and as none are apparent to us. The second and third objections are not worthy of serious consideration. The League is a corporation, and its Board of Directors specifically authorized the filing of this complaint under clear bylaws giving it the power to do so. A corporation, like any other legal entity, is a "person" under section 3(i) of the Act. We reject the half-hearted attempt to inject the defense of ultra vires; that archaic principle is not written into the Environmental Protection Act. The words and the purpose of the statute are clear: Anybody may file a complaint.

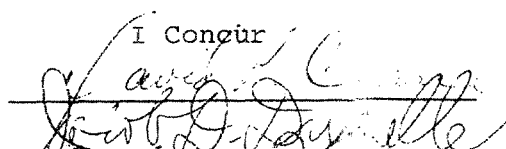
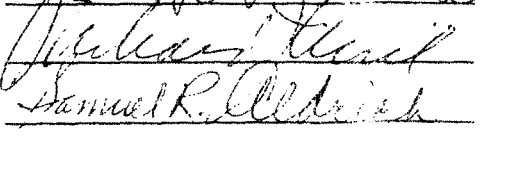
The Attorney General joins the District in arguing that the complaint is "duplicitous" because the Attorney General has filed a suit against the District in the Circuit Court of Lake County. This position, if accepted, would turn established principles of

administrative law squarely on their heads and subvert the purpose of the Environmental Protection Act. The reports are replete with decisions invoking the familiar doctrines of primary jurisdiction and exhaustion of remedies, instructing litigants to seek relief from administrative tribunals before proceeding in court. The present statute plainly attempted to centralize initial decision-making in pollution cases in a single specialized Board, specifically combining authority over air and water pollution, solid waste disposal, and other environmental problems in a single tribunal in recognition of the advantages of experience and continuity in administering the law in a field often requiring considerable technical knowledge. This policy of centralization is especially evident in the case of private complaints, for the private litigant is actually forbidden by statute to go to court until he has sought and been denied relief by the Board (section 45 (b)). The fact that the provision for dismissal of "duplicitous" cases does not apply to complaints filed by the Environmental Protection Agency is further proof that provision was not meant to impair the primary jurisdiction of the Board.

The reason for the ban on "duplicitous" complaints was the fear that allowing private complaints might flood the Board with too many cases raising the same issue and unduly harass a respondent. The fear was not of one complaint before the Board but of many. The very purpose of permitting private complaints was to allow an alleged polluter to be brought before the Board.

In this case there is no other pending complaint against this respondent before the Board. Moreover, the Attorney General's court suit does not allege a violation of the same statute or regulations; it is based upon his independent statutory authority to abate water pollution, and it was instituted before the Act under which the present complaint was filed even was adopted. It is no answer that in a sense both complaints seek the same relief, namely, an order forbidding water pollution by the District. The State has several laws against pollution, and a complaint alleging violation of one of them does not preclude a complaint by another party alleging violation of another law.

The motion to dismiss is denied. Mr. Lawton took no part in the consideration or decision of this motion.

I Concur



I Dissent

I, Regina E. Ryan, Clerk of the Pollution Control Board,
hereby certify that the Board adopted the above Opinion this
8th. day of October, 1970.

Regina E. Ryan
Clerk of the Board