

ILLINOIS POLLUTION CONTROL BOARD
December 28, 1983

PEOPLE OF THE STATE OF ILLINOIS)
)
 v.) PCB 83-205
)
 PARK FOREST SOUTH UTILITY CO.)
 (Certification No. 21RA-ILL-WPC-79-01))

Revocation of Tax Certification.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a Proposal to Revoke Tax Certification adopted by the Board on December 6, 1983. Park Forest South Utility Co. (Park Forest South) filed a brief opposing the revocation on December 19, 1983. Hearing was held on December 20, 1983, at which only the People of the State of Illinois (People) presented evidence. The People filed a response to Park Forest South's brief on December 27, 1983.

Recently enacted Public Act (P.A.) 83-0883, which became effective on September 9, 1983, amends the definition of "Pollution Control Facility" as contained in Section 21a-2 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat. Ch. 120, par. 502a-2) in the following manner:

"For purposes of assessments made after January 1, 1983, "pollution control facilities" shall not include, however, a) any system, method, construction, device or appliance appurtenant thereto, designed, constructed, installed or operated for the primary purpose of (i) eliminating, containing, preventing or reducing radioactive contaminants or energy, or (ii) treating wastewater produced by the nuclear generation of electric power; b) any large diameter pipes or piping systems used to remove and disperse heat from water involved in the nuclear generation of electric power; or c) any equipment, construction, device or appliance appurtenant thereto, operated by any person other than a unit of government, whether within or outside of the territorial boundaries of a unit of local government, for sewage disposal or treatment.

The Pollution Control Board shall revoke any prior certification in conflict with this amendatory act of 1983 before January 1, 1984."

Pursuant to this statutory directive, the Board reviewed Pollution Control Facility Certifications and Applications for Certification which were referred to the Board by the Illinois Environmental Protection Agency for decertification under this language.

The threshold question before the Board is whether it should adjudicate Park Forest South's constitutional claim. The Board considered that question in People v. Santa Fe Park Enterprises, PCB 76-84, September 23, 1983. That case involved the constitutionality of P.A. 82-654, amending Section 25 of the Environmental Protection Act, Ill. Rev. Stat. ch 111½, ¶1025. The Board noted that it has generally become a matter of hornbook law that "we do not commit to administrative agencies that power to determine constitutionality of legislation," citing Davis, Administrative Law Treatise, §20.04, and n.1., although there is no authority in Illinois supporting the proposition that the Board either lacks or holds such authority. However, the Board held that it was

"persuaded by the Attorney General's arguments that the Board is necessarily empowered to consider constitutional issues, and that, in appropriate cases, such issues should be addressed by the Board in the interests of efficient adjudication of the entire controversy before it.*** Given the constitutional underpinnings of the [Environmental Protection] Act as explained below, the Board finds the general, administrative agency "no authority" rule inapplicable to its unique statutory role [as established in the Environmental Protection Act]." (slip op. at 5, emphasis added).

The Board does not find this to be an appropriate case for adjudication by the Board of the constitutionality of this legislative enactment. The arguments accepted by the Board in Santa Fe supporting its resolution of a constitutional challenge to an enactment altering the enforcement mechanism of the Environmental Protection Act are inapplicable here. They do not persuade the Board that it should enter the arena of taxation law to consider the constitutionality of a tax benefit provision of the Revenue Act.

The Board provided an opportunity for a hearing to present contrary facts on this matter on December 20, 1983 at 9:00 a.m. at the Pollution Control Board Offices. Such hearings were scheduled if the Board received a request for hearing and a short statement of the facts to be presented at hearing no later than

12:00 noon on December 19, 1983. No such hearing was requested in this matter, and the only evidence presented was on behalf of the People and was in support of the revocation. Since Park Forest South's brief raised only constitutional issues which the Board has declined to decide, the Board finds that the facility which is the subject of this certification falls within subparagraph (c) of paragraph 502a-2 of the Illinois Revenue Act of 1939, as amended. The subject certification will, therefore, be revoked.

This Opinion and Order constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Tax Certification No. 21RA-ILL-WPC-79-01 issued to Park Forest South Utility Co. is hereby revoked.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 28th day of December, 1983, by a vote of 7-0.

Christan L. Moffett, Clerk
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Illinois Pollution Control Board