

HOST SITE AGREEMENT FOR LANDFILL NOT UNLAWFUL DELEGATION OF MUNICIPAL AUTHORITY

Twenty-five Williston homeowners filed a complaint in Chittenden Superior Court alleging that Williston's 1992 agreement with the Chittenden Solid Waste District (CSWD) for siting, construction, and operation of a solid waste disposal facility in the Town was an unlawful delegation of municipal authority. The homeowners contended that by promising to support CSWD in its permit applications and warranting that CSWD's plans conform with the town plan, Williston illegally delegated its statutory authority regarding construction, permitting, and operation of solid waste disposal facilities. The Chittenden Superior Court found for the Town and the homeowners appealed the decision to the Vermont Supreme Court.

In rejecting the homeowners' arguments, the Supreme Court held that a municipality's agreement not to oppose the other party to the contract in its permit applications was entirely permissible, especially given the specific statutory authorization for municipalities to enter into contracts with a waste disposal district for the siting and management of landfills under 24 V.S.A. § 2202a(b). Williston's ability to pledge its cooperation to further the goals of the agreement was implicit in its authority to contract for the siting, construction, and operation of a waste disposal facility. By pledging its cooperation in siting the landfill, the Town did not abrogate its statutory right to exercise its party status in various local and state permitting proceedings or cede any legislatively derived power. With respect to the town plan warranty, the agreement did not "displace existing state permitting, licensing, and public hearing requirements," nor did it promise the success of these permitting processes. *Gade v. Chittenden Solid Waste District and Town of Williston*, 2009 VT 107.

The *Gade* case represents an important recognition of municipal authority to contract with other parties to accomplish common goals. A pledge of mutual cooperation between the municipality and another party will not amount to an unlawful delegation of municipal authority if the subject of the contract is within the power of the municipality to enter in the first instance. With respect to local and state permitting, so long as the independence of the process is maintained, a town's pledge to cooperate with an outside party in the permitting processes will not be considered illegal.

A copy of the decision is at <http://info.libraries.vermont.gov/supct/current/op2008-462.html>.

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