STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

October 25, 2007

Mr. David K. Hebert
Forest Lake City Attorney
Hebert and Welch, PA
Town Square
20 North Lake Street, Suite 301
Forest Lake, MN 55025

Dear Mr. Hebert:

I thank you for your correspondence dated June 27, 2007 concerning the authority of the City of Forest Lake (the "City") to require inclusion of affordable housing in new residential developments.

Facts and Background

You state that as part of a settlement of a recent lawsuit relating to allowance of affordable housing in Forest Lake, the City agreed to review its comprehensive plan and land use controls, with the goal of increasing the amount of affordable housing in the City. You also state that following a study by a City task force, a draft ordinance to encourage affordable housing was discussed. You state that options proposed to accomplish that goal included the following:

1. Requiring developers of developments of ten or more dwelling units to provide 20% of new rental units or 20% of new owner-occupied units to be "affordable" as defined by certain standards.

2. Requiring developers who did not wish to provide affordable units in their developments to pay a fee based on the difference between market rate units and affordable units to be placed in a trust fund to subsidize construction of affordable housing units in other subdivisions or to aid in converting existing units from market rate to affordable housing.

3. Limiting the amount of housing costs for affordable rental units to an amount not exceeding a monthly rental affordable at 30% of area median income for Washington County.

4. Limiting the amount of housing costs for for-sale units to an amount not exceeding monthly costs affordable at 50% of area median income for Washington County.

5. Establishing a number of City-sponsored initiatives such as waiving part or all of various utility and building permit fees, tax abatement and similar tools.

You ask the following questions:

1. In light of Minnesota Statutes § 462.358 and/or any other applicable law, does a city have express or implied authority to mandate affordable housing in the manner described in items 1 and 2 above?

2. Does mandating a percentage of affordable housing in the manner described in items 1 and 2 above constitute a regulatory taking for which compensation must be paid?

3. Can a city require that a developer/contractor include procedures for determining and reviewing the eligibility of proposed buyers and both proposed and existing renters of affordable housing in satisfaction of the mandate to provide affordable housing as described in item 1?

4. Can a city mandate the formula or standard by which prices or rents of affordable units are established?

5. Can a city require that any affordable housing receiving city funds or incentives remain affordable if resold within a specified term such as 30 years?

Law and Analysis

First, as you point out, an October 1, 2001 opinion letter from this Office to the St. Cloud City Attorney (copy enclosed) concluded on the basis of the language in Minn. Stat. § 462.358, subd. 1a, that municipalities were authorized, in general, to impose subdivision regulations requiring that portions of new residential subdivisions consist of "affordable" housing. This statute recognizes that, in order "to promote the availability of housing affordable to persons and families of all income levels," "a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions."[1] The letter expressed doubt, however, as to whether a city has the authority to collect monetary payments from developers in lieu of providing such affordable housing units.

[1] Consistent with Op. Atty. Gen. 629a, May 9, 1975, the letter did not express any opinion concerning the validity of any specific ordinances designed to accomplish that result.

Second, in 2002, the Legislature enacted a new subdivision to Minn. Stat. § 462.358, which provides as follows:

> Subd. 11. AFFORDABLE HOUSING. For the purposes of this subdivision, a "development application" means subdivision, planned unit development, site plan, or other similar type action. If a municipality, in approving a development application that provides all or a portion of the units for persons and families of low and moderate income, so proposes, the applicant may request that provisions authorized by clauses (1) to (4) will apply to housing for persons of low and moderate income, subject to agreement between the municipality and the applicant:
>
> (1) establishing sales prices or rents for housing affordable to low- and moderate-income households;
>
> (2) establishing maximum income limits for initial and subsequent purchasers or renters of the affordable units;
>
> (3) establishing means, including, but not limited to, equity sharing, or similar activities, to maintain the long-term affordability of the affordable units; and
>
> (4) establishing a land trust agreement to maintain the long-term affordability of the affordable units.
>
> Clauses (1) to (3) shall not apply for more than 20 years from the date of initial occupancy except where public financing or subsidy requires longer terms.

Act of April 5, 2002, Ch. 315, § 1, 2002 Minn. Laws 517, codified as Minn. Stat. § 462.358, subd. 11 (hereinafter referred to as "The 2002 Act").

Third, we find nothing in the 2002 Act that calls for any change in the opinion of this Office as expressed in the October 1, 2001 letter to the St. Cloud City Attorney. The general language of § 462.358, subd. 1a authorizing municipalities to impose subdivision regulations requiring that portions of new residential subdivisions consist of "affordable" housing was not modified or repealed by the Legislature. We do not agree with the conclusion expressed by the League of Minnesota Cities Insurance Trust in its May 15, 2007 letter to you that the 2002 Act curtailed existing municipal authority to include affordable housing requirements in subdivision regulations. Rather, we see the added provisions as complementary to a municipality's general authority under Minn. Stat. § 462.358, subd. 1a, by clarifying municipal authority to utilize particular means and processes in achieving affordable housing goals. Further, we note that for municipalities in the metropolitan area, additional authority for requiring affordable housing is found in Minn. Stat. § 473.859, which among other things, requires municipal comprehensive

plans and implementation programs to promote the development of low and moderate income housing.

Fourth, legislative history indicates that the bill was prompted to a substantial degree by uncertainty on the part of municipalities as to their authority to utilize the specified mechanisms in promoting the inclusion of affordable housing in new real estate developments. For example, Mr. Tom McElveen testified as a representative of the Builders' Association of Minnesota before the House Commerce, Jobs and Economic Development Committee on February 27, 2002 as follows:

> Any time there is a direct subsidy in a unit, whether it be from local sources like tax increment financing, state sources, through your own housing finance agency, for federal sources such as taxes and revenue bonds or home money through other such federal sources, it's absolutely clear that you can have sale price restrictions, income restrictions, and long term affordability restrictions. What this bill does is take us all to the next level. What we're trying to do out there is create affordable housing without the use of these deep subsidies. And we've actually got two case studies right now, one in Chanhassen and one in the city of Chaska where, through density bonuses and other regulatory relief, the developer has been able to bring the for-sale price down to below market prices, and has accomplished that without the use of local, state, or federal subsidies. Lacking those subsidies, the testimony the city of Chaska provided to the inclusionary Housing Task Force through the Minnesota Housing Finance Agency last fall, it's unclear as to whether or not a city and a developer can establish sale price limitations, income limits, and long term portability requirements. So in my view, this bill adds to the toolbox, would make it explicit that where we're to achieve those affordability objectives and those public policy objectives of workforce, providing workforce housing, we have the legal means explicitly to do those things.

Fifth, while the 2002 Act perhaps could have benefited from less convoluted language, it seems clear that municipalities are authorized to require the developer's agreement to some or all of the listed restrictions as a condition of approval of a subdivision or planned unit development. The new language acknowledges that, if a municipality's regulations provide for the inclusion of some "affordable housing," approval of the development application may be conditioned on the developer's agreement to terms referenced in clauses (1) to (4) of that provision. Indeed, the prefatory language of section 462.358, subd. 11 is written in the following context: "[i]f a municipality, in approving a development application ...." If the legislature did not intend to allow a municipality to disapprove a development application on the basis provided for in the statute, there would have been no need to refer to the municipality's approval of the application. A contrary result would essentially give a developer a "veto" over a municipality's affordable

housing ordinance.[2] *See* Minn. Stat. §§ 645.17(2) (legislature intends entire statute to be effective). Had the Legislature intended such a departure from existing law, it presumably would have stated so expressly and would have repealed subdivision 1a of the statute, which it left intact. For municipalities in the metropolitan area, such "veto" authority by a developer could impede a municipality's ability to comply with its requirement to have comprehensive plans and implementation programs to promote the development of low and moderate income housing under Minn. Stat. § 473.859.

Sixth, we similarly find nothing in the 2002 Act that calls for any change in the opinion of this Office as expressed in the October 1, 2001 letter to the St. Cloud City Attorney concerning whether a municipality is authorized to impose fees in lieu of providing affordable housing. That is not one of the mechanisms specifically authorized by the 2002 Act, or by any other legislation that of which we are aware.

Seventh, for reasons discussed in Op. Atty. Gen. 629a, May 9, 1975 (copy enclosed), Attorney Generals' Opinions are not ordinarily directed to questions that are hypothetical or fact-dependent in nature. For that reason, we do not formally opine on whether application of a hypothetical ordinance might be seen as a taking in some hypothetical future setting. I should note, however, that we are not aware of any authority for the categorical proposition that requiring residential property developments to include a portion consisting of affordable housing units would in itself constitute a taking. Indeed, we are aware of a number of municipalities in the metropolitan area that have affordable housing ordinances, and we are not aware of a successful challenge to these ordinances under a "takings" analysis. In *Nolan v. California Coastal Community,* 483 U.S. 825, 107 S. Ct. 3191 (1987) and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S. Ct. 2309 (1994), the Court held that requiring property developers to permanently dedicate a portion of their property for public use as a condition for obtaining needed building permits, could be considered a taking if the requirement was not reasonably related, and proportional, to the impact of the proposed development on local resources. *Cf.* Minn. Stat. § 462.358, subd. 2b(e) (dedication requirements must be based upon need attributable to subdivision). Requiring a proposed subdivision to meet legitimate requirements related to land use does not ordinarily involve the type of transfer of actual ownership rights that was present in *Nolan* and *Dolan.* Nor should such requirements in general result in a taking determination based upon denial of all economically beneficial uses of a developer's land as discussed in *Lucas*

---

[2] Should a developer challenge a municipality's refusal to approve a particular application in the absence of such an agreement as unreasonable under the facts and circumstances of any particular case, the matter may be addressed by a court on a case-by-case basis. *See, e.g., Concept Properties, LLP v. City of Minnetrista,* 694 N.W.2d 804, 815 (Minn. Ct. App. 2005) (*rev. denied* July 19, 2005); *Wensmann Realty Inc. v. City of Eagan,* 734 N.W.2d 623, 630 (Minn. Ct. App. 2007).

v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886 (1992). *See also Wensmann Realty Inc. v. City of Eagan,* 734 N.W.2d 623 (Minn. 2007).

Finally, the legislative history of section 462.358, subd. 11 reflects a general understanding that, even before the enactment of the 2002 Act, the establishment of the requirements described therein could well be an element in the process of negotiating terms for municipal financial subsidies. The scope of a municipality's authority or responsibility to impose conditions upon the development of housing projects receiving public subsidies must also be determined with reference to the statutes governing the particular programs under which the subsidies are provided. *See, e.g.,* Minn. Stat. Ch. 462C, §§ 469.012-469.022, 469.034 (2006).

Opinion

In summary, we adhere to our previous opinion that municipalities have authority under Minn. Stat. § 462.358 (and under section 473.859 for metropolitan-area cities) to require that subdivision developments include affordable housing and that developers agree to reasonable measures of the type listed in Minn. Stat. § 462.358, subd. 11 designed to aid in achieving affordable housing goals.

Sincerely,

Lori Swanson

LORI SWANSON
Attorney General

Enclosures: *Op. Atty. Gen. (Oct. 1, 2001)*
Op. Atty. Gen. 629a (May 9, 1975)

AG: #1887660-v1

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

525 PARK STREET
SUITE 200
ST. PAUL, MN 55103-2106
TELEPHONE: (651) 297-2040

October 1, 2001

Mr. Jan F. Petersen
St. Cloud City Attorney
400 Second Street South
St. Cloud, MN 56301-3699

Dear Mr. Petersen:

Thank you for your letter dated July 25, 2001 and supplemental materials received on August 16, 2001 concerning St. Cloud's proposed affordable housing ordinance.

FACTS

You state that the City of St. Cloud has under consideration a 16-page ordinance that would generally require residential housing developments comprising more than six owner-occupied dwellings to include a specific percentage of "affordable residential units" (ARUs). Furthermore, the ARUs may only be sold to "eligible persons" as defined by the ordinance for a maximum price as determined by a designated "service provider."

ARUs may be resold during the first 10 years after original sale for no more than a "maximum resale price" as determined according to the terms of the ordinance. During the second 10 years after the first sale the seller must pay 50 percent of the capital gains realized to the city's service provider for the city's "affordable housing fund." The developer will be required to execute and record restrictive covenants assuring that restrictions on the ARUs will run with the land for at least 20 years.

A developer of less than 20 housing units who does not wish to build the required number of ARUs may make an in lieu payment to the affordable housing fund for each ARU not built. Developers of larger projects may be required by the city to make payments in lieu of constructing ARUs. The money in the affordable housing fund will be spent by the service provider for costs of administering the ordinance and for "other city efforts" to assist prospective homeowners to purchase ARUs. The ordinance provides for a density bonus pursuant to which a developer which constructs ARUs is allowed to develop 20 percent more residential units in the development than would otherwise be permitted.

You inquire whether a Minnesota city has the authority to adopt an affordable housing ordinance which would require a specific percentage of the dwelling units constructed in each development to be classified as affordable or, in the alternative, require a payment in lieu of providing the units.

ANALYSIS

As noted in Op. Atty. Gen. 629a, May 9, 1975, the Attorney General's Office does not normally undertake by way of opinion a general review of a local ordinance to determine its validity or to ascertain possible legal problems. Therefore, while we can address the general authority of a city to enact an ordinance requiring construction of affordable housing units in connection with residential property development, we decline to render an opinion concerning the validity of the particular proposed ordinance submitted.

It should be noted, however, that a city does have general statutory authority to enact requirements for construction of affordable housing units in connection with development of residential subdivisions. As political subdivisions of the state, cities have those powers that are conferred by statute or charter or necessarily implied therefrom. *See, e.g., Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966). The authority for cities to adopt official controls regulating private land use and development is contained in Minn. Stat. §§ 462.351-462.365. We are not aware, however, of express statutory authority for the specific type of regulation proposed by the city.[1] General authority to regulate land subdivision is contained in Minn. Stat. § 462.358, which provides in subdivision 1a:

> To protect and promote the public health, safety, and general welfare, to provide for the orderly, economic, and safe development of land, to preserve agricultural lands, *to promote the availability of housing affordable to persons and families of all income levels*, and to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions. The regulations may contain varied provisions respecting, and be made applicable only to, certain classes or kinds of subdivisions. The regulations shall be uniform for each class or kind of subdivision.

(Emphasis added.)

This language, in our view, provides statutory authority for enactment of a subdivision regulation providing for a reasonable portion of residential subdivisions to consist of housing units that would be affordable to persons of low or moderate income. However, as noted above, we express no opinion as to whether the proposed sample ordinance submitted would be a permissible mechanism to exercise that authority.

---

[1] Bills have been introduced in the current legislative session that would expressly authorize municipalities to require residential subdivisions to include affordable housing. *See* H.F. 1952, 1953, and 2400; S.F. 1217. However, none have been enacted to date.

Whether a city has the authority to collect monetary charges in lieu of providing affordable housing units is less likely. Minn. Stat. § 462.358, subd. 2a specifically authorizes a city to require a monetary deposit to assure that required public improvements are made within a development. Subdivision 2b further provides that a city may require a certain portion of a subdivision to be dedicated for purposes of conservation, parks, recreational facilities, playgrounds, trails, wetlands, or open space, but may choose to accept cash payment in lieu of the dedications.[2]

Neither of these provisions or other statutes, to our knowledge, authorize collection of money in lieu of providing affordable housing. Absent such authority, we doubt that such a cash payment alternative requirement would be permissible. Minnesota courts have, as a general matter, broadly construed the regulatory authority granted by land use control statutes. *See, e.g., Naegele Outdoor Advertising v. Village of Minnetonka*, 281 Minn. 492, 162 N.W.2d 206 (1968); (City has implied power under zoning laws to eliminate nonconforming uses); *Almquist v. Town of Marshall*, 308 Minn. 52, 245 N.W.2d 819 (1976); (Town had implied power to impose temporary moratorium on land development). However, they have not been inclined to infer authority for a municipality to impose revenue raising monetary charges from general statutory authority for zoning and subdivision regulation. This is especially the case where the other statutes specifically provide for means of funding actions sought to be financed by the disputed charges. *Cf. Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681 (Minn. 1997) (no implied authority for city to impose road "connection charge" to raise revenue for street projects for benefit of the public in general).

Minnesota statutes that authorize municipalities to subsidize construction or purchase of low and moderate income housing also authorize particular forms of funding for such activities. *See, e.g.*, Minn. Stat. §§ 462C.07 (revenue bonds), 469.033 (federal grants, bonds, special benefit taxes on all taxable property), 469.174, *et seq.* (tax increment financing). These do not, however, appear to include the sort of in-lieu charge contemplated here.

CONCLUSION

We believe that cities are generally authorized to enact regulations requiring residential subdivisions to include a reasonable proportion of housing affordable to low or moderate income purchasers, but may not, absent more specific statutory authority, be authorized to provide for payment of a monetary charge in lieu of the required units.

---

[2] *But see Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995) (City must show relationship between the property development and the city's need for land dedication).

I hope this analysis is helpful to you in advising the city on this matter.

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General

(651) 297-1141

AG: 509377,v. 01

MINNESOTA LEGAL REGISTER

MAY, 1975 Vol. 8, No. 5 Page 22

Opinions of the Attorney General

Hon. WARREN SPANNAUS

ATTORNEY GENERAL: OPINIONS OF: Proper subjects for opinions of Attorney General discussed.

Thomas M. Sweeney, Esq.
Blaine City Attorney
2200 American National Bank Building
St. Paul, Minnesota 55101

May 9, 1975
629-a
(Cr. Ref. 13)

In your letter to Attorney General Warren Spannaus, you state substantially the following

FACTS

At the general election in November 1974 a proposal to amend the city charter of Blaine was submitted to the city's voters and was approved. The amendment provides for the division of the city into three election districts and for the election of two council members from each district. It also provides that the population of each district shall not be more than 5 percent over or under the average population per district, which is calculated by dividing the total city population by three. The amendment also states that if there is a population difference from district to district of more than 5 percent of the average population, the charter commission must submit a redistricting proposal to the city council.

The Blaine Charter Commission in its preparation and drafting of this amendment intended that the difference in population between election districts would not be more than 5 percent over or under the average population for a district. Therefore, the maximum allowable difference in population between election districts could be as great as 10 percent of the average population.

You then ask substantially the following

QUESTION

Does the Blaine City Charter, as amended, permit a maximum population difference between election districts of 10 percent of the average population per district?

OPINION

The answer to this question depends entirely upon a construction of the Blaine City Charter. No question is presented concerning the authority to adopt this provision or involving the application or interpretation of state statutory provisions. Moreover, it does not appear that the provision is commonly found in municipal charters so as to be of significance to home rule charter cities generally. See Minn. Stat. § 8.07 (1974), providing for the issuance of opinions on questions of "public importance."*

* Minn. Stat. § 8.07 (1974) lists those officials to whom opinions may be issued. That section provides as follows:

> The attorney general on application shall give his opinion, in writing, to county, city, town attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education he shall give his opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved be decided otherwise by a court of competent jurisdiction.

See also Minn. Stat. §§ 8.05 (regarding opinions to the legislature and legislative committees and commissions and to state officials and agencies) and 270.09 (regarding opinions to the Commissioner of Revenue).

IN THIS ISSUE

In construing a charter provision, the rules of statutory construction are generally applicable. See 2 McQuillin, Municipal Corporations § 9.22 (3rd ed. 1966). The declared object of statutory construction is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16 (1974). When the words of a statute are not explicit, the legislature's intent may be ascertained by considering, among other things, the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained. Id.

Thus, an interpretation of a charter provision such as that referred to in the facts would require an examination of a number of factors, many of which are of a peculiarly local nature. Local officials rather than state officials are thus in the most advantageous position to recognize and evaluate the factors which have to be considered in construing such a provision. For these reasons, the city attorney is the appropriate official to analyze questions of the type presented and provide his or her opinion to the municipal council or other municipal agency. The same is true with respect to questions concerning the meaning of other local legal provisions such as ordinances and resolutions. Similar considerations dictate that provisions of federal law generally be construed by the appropriate federal authority.

For purposes of summarizing the rules discussed in this and prior opinions, we note that rulings of the Attorney General do not ordinarily undertake to:

(1) Determine the constitutionality of state statutes since this office may deem it appropriate to intervene and defend challenges to the constitutionality of statutes. See Minn. Stat. § 555.11 (1974); Minn. R. Civ. App. P. 144; Minn. Dist Ct. (Civ.) R 24.04; Op. Atty. Gen. 733G, July 23, 1945.

(2) Make factual determinations since this office is not equipped to investigate and evaluate questions of fact. See, e.g., Ops. Atty. Gen. 63a-11, May 10, 1955 and 121a-6, April 12, 1948.

(3) Interpret the meaning of terms in contracts and other agreements since the terms are generally adopted for the purpose of preserving the intent of the parties and construing their meaning often involves factual determinations as to such intent. See, Op. Atty. Gen. 629-a, July 25, 1973.

(4) Decide questions which are likely to arise in litigation which is underway or is imminent, since our opinions are advisory and we must defer to the judiciary in

MINNESOTA LEGAL REGISTER

Published monthly and containing all Opinions of the Minnesota Attorney General

Published by The Progress-Register

200 Upper Midwest Bldg., Minneapolis, Mn. 55401

Sold only in combination with The Progress-Register (weekly) at $15.00 per year in Minnesota. Out-of-state $16.00 per year. Payable in advance. Binder and index service included.

Second-class postage paid at Minneapolis, Mn.

such cases. See Ops. Atty. Gen. 519M, Oct. 18, 1956, and 196n, March 30, 1951.

(5) Decide hypothetical or moot questions. See Op. Atty. Gen. 519M, May 8, 1951.

(6) Make a general review of a local ordinance, regulation, resolution or contract to determine the validity thereof or to ascertain possible legal problems, since the task of making such a review is, of course, the responsibility of local officials. See Op. Atty. Gen. 477b-14, Oct. 9, 1973.

(7) Construe provisions of federal law. See textual discussion supra.

(8) Construe the meaning of terms in city charters and local ordinances and resolutions. See textual discussion supra.

We trust that the foregoing general statement on the nature of opinions will prove to be informative and of guidance to those requesting opinions.

WARREN SPANNAUS, Attorney General
Thomas G. Mattson, Assist. Atty. Gen.

COUNTY: POLLUTION CONTROL: SOLID WASTE: A county may require all households to pay for solid waste collection services if such a requirement is necessary in order to carry out the purposes of Minn. Stat. ch. 400, Minn. Stat. §§ 400.01, 400.04, and 400.08 (1974).

Luther P. Nervig, Esq.
Wadena County Attorney
503 South Jefferson
Wadena, Minnesota 56482

May 21, 1975
125a-68

In your letter to Attorney General Warren Spannaus, you state substantially the following

FACTS

Wadena County has enacted a solid waste disposal ordinance pursuant to Minn. Stat. ch. 400, the "County Solid Waste Management Act." Pursuant to the ordinance, a solid waste collection service is made available to all households in most cities of the county and a mandatory service charge is imposed for the availability of this service. Because of the relatively small population in those cities it was apparent that the service and charges had to apply to all households in order for the collection system to survive financially. Some persons do not desire to use this service and pay the charges.

You then ask substantially the following

QUESTION

Does a county have authority pursuant to Minn. Stat. ch. 400 (1974) to impose a mandatory service charge on all households in a municipality for the availability of a solid waste collection service if it has determined that this requirement is necessary in order to carry out the purposes of that chapter?

OPINION

Based upon the language of Minn. Stat. ch. 400 (1974) and prior opinions of this office interpreting the provisions of that chapter, we answer your question in the affirmative. Since factual questions are involved in determining whether a particular requirement is necessary to carry out the purposes of chapter 400, such a determination is, of course, for the county board and not this office to make.

Chapter 400 authorizes counties to operate or contract for the operation of a solid waste collection service and to obligate persons to pay "for solid waste management services to their properties." See Minn. Stat. §§ 400.03, 400.04 and 400.08 (1974). Although no provision in chapter 400 specifically authorizes a county to establish a program which makes a collection service available to all households and imposes a fee payable by all such households, Minn. Stat. § 400.04 subd. 1 (1974) provides that a county may conduct a solid waste management program which includes activities authorized by chapter 400 and other activities which are "necessary and convenient to effectively carry out the purposes" of that chapter.

Minn. Stat. § 400.01 (1974) sets forth the purposes of chapter 400 as follows:

> In order to protect the state's water, air and land resources so as to promote the public safety, health, welfare and productive capacity of its population, it is in the public interest that counties conduct solid waste management programs.

A solid waste management program includes solid waste collection. Minn. Stat. § 400.03 subd. 2 (1974). It is our opinion that a county may determine that a mandatory charge of the type in question is necessary and convenient to carry out the purposes of chapter 400.

This conclusion is consistent with that reached in Op. Atty. Gen. 125a-68, Oct. 26, 1973, which held that a county could make a determination to award an exclusive contract for the collection, transportation and disposal of solid wastes within the county. That opinion stated:

> Since the execution of an exclusive contract is not expressly prohibited, it is a proper activity if "necessary and convenient" to carry out the purposes of chapter 400. These purposes are summarized in Minn. Stat. § 400.01 (1971) . . . In our opinion, under appropriate factual circumstances a county may determine that promoting the objectives stated in section 400.01 requires the award of an exclusive contract for the provision of collection, transportation and disposal services. As this is a factual determination for the county board, we express no opinion as to the existence of appropriate factual circumstances in Lincoln County.

Our conclusion is also consistent with that in Op. Atty. Gen. 125a-68, June 7, 1973, where the question was whether a county could require that all solid waste generated within a county be collected and hauled only to disposal sites designated in the county solid waste management plan. It was stated:

> In our opinion a county may determine, under appro-