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500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-891

COUNTIES:
Disposition of Excess Land

Honorable Michael M. Mihm
State's Attorney
Peoria County
Courthouse
Peoria, Illinois 61602

Dear Mr. Mihm:

I have your letter wherein you state, in part, as follows:

" * * * Peoria County owns a tract of real estate on which is located a building which is not currently occupied or used and is one of the older county buildings. Because of the amount which it is estimated would be required for remodeling and repair to permit it to be used, the sale or lease of said property is currently under serious consideration by the County Board of Peoria County.

The building was originally constructed and

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used as a sanitarium for the care and treatment of residents of the county afflicted with tuberculosis. In subsequent years it was used as a county nursing home. As stated above, currently it is not used for any purpose.

* * *

At present Peoria County has under consideration the following two alternative uses or dispositions:

1. Outright sale of said property on public bid.
2. A long-term land lease to a federal agency who desires such for a federal purpose as a U.S. Naval Marine Corp. Training Center Reserve, but for a nominal annual ground rent not related to the fair rental value.

* * *

Subsequent to the receipt of your letter, this office has communicated with Stanley Crutcher, Assistant State's Attorney of Peoria County, who has informed me that this building was never used by the county as a tuberculosis sanitarium, as was originally indicated in your letter. Apparently, this property is owned outright by the county and is no longer currently occupied or used for any purpose.

Peoria County is not a home rule unit. There are a small

number of specific constitutional powers that have been directly granted to counties that are not home rule units. (See, e.g., Ill. Const., art. VII, sec. 7.) Generally speaking, however, counties which are not home rule units have only those powers granted to them by law (Ill. Const., art. VII, sec. 7) plus those powers that may be implied as necessary to carry out specific statutory powers. Goodwine v. County of Vermilion, 271 Ill. 126; Heidenreich v. Ronske, 26 Ill. 2d 360.

Section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1971, ch. 34, par. 303, as amended by Public Act 78-452) provides, in part, as follows:

"§ 24. Each county shall have power—First—To purchase and hold the real and personal estate necessary for the uses of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff.

Second—To sell and convey or lease any real or personal estate owned by the county.

* * *

"

The county of Peoria holds property in trust for the benefit of the inhabitants of the county. As was said in Sherlock v. Village of Winnetka, 59 Ill. 389, at page 398:

"[T]he corporation is bound to administer such property faithfully, honestly and justly, and if it is guilty of a breach of trust by disposing of its valuable property, without any, or a nominal, consideration, it will be regarded in the same light as if it were the representative of a private individual, or of a private corporation; that the mere fact in such a case, that the forms of legislation are used in committing such breach of trust, will make no difference in the character of the act. It will not be, in any sense, the exercise of a political power delegated for public purposes, and the privilege of exemption from judicial interference terminates where legislative action ends."

In McCord v. Pike, 121 Ill. 288, the Illinois Supreme Court sustained the jurisdiction of a court of equity to enjoin the execution of a deed to property by the corporate authorities of Cook County where it appeared that such property was about to be, collusively and fraudulently, disposed of for less than its value. At page 296, the court stated: "Trust property cannot be arbitrarily or capriciously disposed of, it must be sold for the most that it will bring in market."

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With regard to the outright sale of the county property referred to in your letter, you must be sure that when this property was conveyed to the county there were no restrictions placed on the reconveyance of the property by the county. Assuming that it is in the best interest of the county to sell this property, the second paragraph of section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1971, ch. 34, par. 303, as amended by Public Act 78-452) clearly authorizes a county to sell and convey real estate owned by the county. Therefore, my answer to your first question is in the affirmative.

With regard to your second question, my predecessor, Attorney General Ivan A. Elliott, had occasion to discuss the legality of a lease of county property for a rental of \$1 per year. Attorney General Elliott held that a county could not rent county property for this amount. (1949 Ill. Att. Gen. Op. 251; see, also, 1949 Ill. Att. Gen. Op. 116.) Specifically, at page 252, he stated:

"The next question to be determined is

whether the rental of \$1.00 per year is sufficient.

In the case of Hackett v. Trustees of Schools, 398 Ill. 27, the Supreme Court held that a school board held all its property for public use and that neither the school board or the electors of the school district could give away its money or property. This would also apply to a county. A rental of \$1.00 per year for the fifty acres might possibly be considered wholly inadequate, amounting to a gift to the County Fair Association of the actual rental value of the property.

I am therefore of the opinion that the rental provision of the lease should be for an adequate consideration."

There are no statutory provisions authorizing Peoria County to make a gift or donation of county real property or the rental value of such real property. Thus, the renting of county real property for a nominal consideration would be tantamount to a gift of the rental value of such property and any lease entered into for such a nominal consideration would be ultra vires, and therefore, without effect.

In Perkins v. Reservoir Pk. Fish. & Boat. Club, 130 Ill. App. 128, the court denied a motion to dismiss a bill in which it was alleged that the consideration for a lease of property owned by a municipal corporation was currently inadequate and

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noted that it had been practically admitted that the annual rental was indeed insufficient and was merely a nominal consideration. The court reviewed the contention that the lease imposed upon the lessee many burdens that made the consideration to the city much more than the named consideration. According to the court, the burdens assumed by the lessee were those which were made necessary by the purposes for which the premises were to be used, for the advantage and profit of the lessee, and could not be considered, in any sense, as a substantial consideration to the city for the use of the premises.

Peoria County is a unit of local government. (Ill. Const., art. VII, sec. 1.) Presently, there are constitutional and statutory provisions authorizing a unit of local government, such as a county, to contract with the Federal government. (Ill. Const., art. VII, sec. 10; Public Act 78-785.) However, neither of those provisions authorize a county to make a gift or donation of the rental value of its real property.

Therefore, I am of the opinion that the answer to your

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second question is in the negative. Peoria County may not lease its real property for a nominal consideration. Such a lease would be tantamount to a gift of the rental value of the real property and Peoria County does not have the statutory authorization to make such a gift.

Very truly yours,

A T T O R N E Y G E N E R A L