

From: Bill Donahue [
Sent: Thursday, June 19, 2014 2:14 PM
To: 'John Kraft'
Cc: Terrie Sherer
Subject: RE: June 10 Resolution to declare surplus property

The Illinois Statutes concerning the power of the County to sell and convey land is contained in the Counties Code. As one commentator noted: "The Counties Code does not contain the public notice, bidding, and other procedural requirements applicable to municipalities and other local governments." Illinois Jurisprudence, Volume 21, Chapter 17 (Lexis 1995). Indeed the language is brief in comparison to for instance the Township provisions for the sale of land. There is no bidding requirement as some have suggested. Nor is there a supermajority required although well over a majority here did vote to sell the farm. The County first voted to sell the County farm and set a minimum bid of 10,000.00 an acre for the farm land. While at one time that would have been an obtainable price, as corn prices have gone down, land values have receded and various articles in the press, like the Wall Street Journal, verified the reduction in values. Nonetheless, the County stuck with the minimum bid price. When the auction failed to bring the bid price, the auctioneer had 90 days to find a buyer outside of the auction. A potential buyer who bid a lower price at the auction approached the County through the auctioneer and said we will come up to the bid price of \$10,000.00 an acre for the tillable farm land if you consider transferring as part of the sale the untillable acres. That requirement was in the sales contract. They also promised to demolish a building and clean up the area which had become dump site, at their cost. In exchange for those two items, a higher cash value on the farm and the promise to demolish a building and clean up the site, the County agreed to take to the Board the issue of transferring the surplus or unneeded acreage to the farm buyer. The land is landlocked currently. Anyone but the adjacent farm owner would have to access the area by driving through County property, going through Songer Cemetery or building access across a ravine. It does

have a substantial amount of waste and a building in need of demolition on it. Absent the sale of the farm ground, it is unlikely that it would be sold as it has little value to anyone else. Regardless of that, the County by considering the issue and voting to find that the property was surplus and not needed for a public purpose and could be transferred as part of the sale of the tillable farmland properly exercised its power to sell and convey. Mr. Hartke and Miles suggest that it should be the subject of bidding. There is no such requirement under the County Code as opposed to the Township Code. If the State had desired to impose a bidding requirement they clearly could have done so and obviously chose not to do so.

In the Attorney General Opinion cited by you, the question involved no exchange of anything of value, which is different. While it is true that property cannot be merely given away, it can be conveyed for something of value. Nothing in the opinion requires a bidding or auction process. Clearly, public officials must obtain fair value for property. Here there was a considerable value obtained in terms of an increased bid price as well as the promise to demolish and clean the lot. The bid price increase (an increase of \$214,470.00) and the value it represented was shown to the Board and was considered by the Board as part of the reason to make the transfer part of the sale. The review of the condition of the property was part of the process. Consideration as defined by the law can take many forms, but at heart is a bargained exchange to do something such as pay money, or the act or not act in a certain way, such as demolishing a building and cleaning the area at your own cost in exchange for ownership. Either concept supports the notion that this was a bargained for exchange. The documentation of the value was available to the public and proper notice was given as required by law. There was no impropriety. The County received an increase in price in the amount of \$214,470.00 as well as the value of the demolition and cleaning cost and the freedom from future care of an area being used improperly as a dump site. That is more

than fair value for 3 to 4 acres of land currently not accessible except by driving through the Animal Shelter driveway. I will note as I told the Board members, I have also consulted outside counsel just to see if I was missing anything and no one has pointed out a problem. If you have any other question, feel free to contact me.

Thank you

Bill Donahue

Assistant State's Attorney

From: Bill Donahue [
Sent: Thursday, June 12, 2014 12:53 PM
To: 'John Kraft'
Cc: Terrie Sherer
Subject: RE: June 10 Resolution to declare surplus property

Mr. Kraft:

Thank you for your email. I will review your information. I believe there is no violation of the law as I see the facts a bit differently, but I want to read the items you have forwarded. I should have a detailed response by Monday or Tuesday.

Thank you

Bill Donahue

Assistant State's Attorney

From: John Kraft [
Sent: Thursday, June 12, 2014 12:11 PM
To: Randy Brinegar; Bill Donahue
Cc:
Subject: June 10 Resolution to declare surplus property

Vermilion County State's Attorney,

I am writing this in hopes it will convince you to put an immediate halt to the transfer (gift) of the approximately 4 acres of Vermilion County property to the purchaser of the adjacent farm ground.

1. The approximately 4 acres were never offered for sale to the public.
2. The purchase of the adjacent farm ground was never contingent on this approximately 4 acres.
3. The resolution to declare the property surplus and to transfer it (free of charge) to the purchaser of the farm ground is an act that the county board did not and does not possess the powers to do.

I wrote an article on this resolution: <http://edgarcountywatchdogs.com/2014/06/vermilion-county-board-violates-law-gives-real-estate-away/>

In that article, I explain why this is an act outside the authority of the board.

- The Illinois Counties Code tells us what powers the county has, and in Section 5-1005 the county has the power, given to them by the legislature, *"to sell and convey or lease any real or personal estate owned by the county"*. So, they can sell and transfer the property to the buyer, or they can lease the property.

- Attorney General Scott wrote in 1974 that *"counties only have the powers granted to them by law"*, and that is restated in the Illinois Constitution, Article VII, Section 7: *"Counties and municipalities which are not home rule units shall have only powers granted to them by law..."* and it lists a couple other specific powers that do not apply to this situation.

- The Illinois Supreme Court enjoined Cook County from the execution of a deed by simply stating that *"...it must be sold for the most that it can bring on market"*.

- The Illinois Attorney general Opinion from 1974 goes even further and states that Peoria County could not lease county property for less than market value because any such lease would constitute a gift, or donation, of the remaining market value – and that counties do not have the power to make gifts or donations.

- This excerpt from *Sherlock v. Village of Winnetka* further explains how this should never have been allowed to happen:

Counties hold property in trust for the benefit of the inhabitants of the county and they are “*bound to administer it faithfully, honestly and justly, and if it is guilty of a breach of trust by disposing of its valuable property for little or no consideration, it is regarded as acting on behalf of an individual. Using forms of legislation in committing such a breach of trust does not make any difference in the act. It will not be considered an exercise of political power for public purposes, and the privilege of exemption from judicial interference terminates where legislative action ends.*”

- In my opinion, certain Vermilion County board members acted in a breach of trust in voting in favor of this resolution. The fact it occurred during a public meeting does not make it legal and they crossed the line between legislative action and acting on behalf of the individual that would gain title to the real estate. This property was given away with no consideration in return.

- Since the donation of real estate cannot serve a legitimate public purpose, I am of the opinion that these board members violated Article VIII, Section 1, of the Illinois Constitution, where it states that “*public funds, property or credit shall be used only for public purposes*”. The gift of this property was not a public purpose; the board was acting on behalf of a private individual, not for the benefit of the county residents.

Finally, I am asking that you cease the transfer of this approximately 4 acres of property, ask the board to nullify its resolution of June 10, 2014, and if they still want to dispose of this real estate they need to put it up for bid or auction in a public sale. There were people present at that meeting interested in purchasing this property, but instead it was given away for no cost. It is my belief this is in violation of the law and should be stopped.

I am not an attorney and these are my personal opinions.

Please reply at your earliest convenience so that I may take further action if needed.

Thanks,

John Kraft