



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-838

**TOWNS AND TOWNSHIPS;
Federal Revenue Sharing**

Frank A. Kirk
Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Director Kirk:

This responds to your opinion request concerning section 20 of article VIII of "AN ACT to revise the law in relation to township organization", as amended by Public Act 78-1189. (Ill. Rev. Stat. 1973, ch. 139, par. 126.10, as amended.) You first ask for an opinion as to whether section 20, as amended, is valid and effectively authorizes the expenditure of Federal funds made available to a township under the State and Local Fiscal Assistance Act of 1972 (32 U.S.C. sec. 1221 et seq.) for the purposes now enumerated in section 20 in absence of other specific statutory authority. Section 20 reads as follows:

"The board of town auditors may enter into any cooperative agreement or contract with any other governmental entity, not-for-profit corporation, or non-profit community service association with respect to the expenditure of township funds, or funds made available to the township under the federal State and Local Fiscal Assistance Act of 1972, to provide any of the following services to the residents of the township:

1. Ordinary and necessary maintenance and operating expenses for:
 - (a) public safety (including law enforcement, fire protection, and building code enforcement),
 - (b) environmental protection (including sewage disposal, sanitation, and pollution abatement),
 - (c) public transportation, (including transit systems and streets and roads),
 - (d) health,
 - (e) recreation,
 - (f) libraries, and
 - (g) social services for the poor and aged, and
2. Ordinary and necessary capital expenditures authorized by law.

In order to be eligible to receive funds from the township under this Section any private not-for-profit corporation or community service association shall have been in existence at least one year prior to the receipt of the funds."

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Public Act 78-1189 was passed by the General Assembly in response to opinion No. S-693 in which I advised that section 20 as it previously read did not effectively permit townships to expend Federal Revenue Sharing funds for the named purposes unless specific statutory authority existed for townships to expend their own funds for such purposes. Under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.), Federal Revenue Sharing funds can be spent by townships only for purposes which qualify as priority expenditures and for which townships are authorized to expend their own funds. The previous section 20 did not authorize townships to expend any of their own funds.

There are many programs which could qualify as priority expenditures for Federal Revenue Sharing purposes for which townships have no authority to expend their own funds. Under Public Act 78-1189 it is clearly the intent of the General Assembly to allow townships to expend their own funds as well as Federal Revenue Sharing funds for the purposes enumerated. This overcomes the specific infirmity in the previous version of section 20.

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No other specific legislation is required for townships to contract for the ordinary and necessary maintenance and operating expenses for the seven areas listed. To read into the Act such a requirement of other specific legislation would defeat the intent of the General Assembly. There is no Federal requirement which would apply in this situation. However, funds can be used for ordinary and necessary capital expenditures only as, in the words of the statute, "authorized by law". For this purpose the General Assembly intended there be other authorizing legislation.

You have suggested no specific reason why section 20, as amended by Public Act 78-1189, should not be considered valid and effective. A strong presumption of constitutional validity attaches to legislative enactments. (Livingston v. Ogilvie, 43 Ill. 2d 9, 12.) Without reference to a specific factual situation or specific objection, the statute must be considered valid and effective.

Even in a specific situation it is a well established rule of statutory construction that statutes are to be construed according to their intent and meaning, taking into consideration the reason for the enactment, the existing circumstances and the objects sought to be obtained by the legislature.

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(Ill. Nat. Bank v. Chegin, 35 Ill. 2d 375, 378.) It is also a duty of the court to interpret a statute so as to promote its essential purpose and to avoid, if possible, a construction that would raise doubts as to its validity. The People v. Nastasio, 19 Ill. 2d 524, 529.

The purposes enumerated in the Act are simply the priority expenditures listed in section 103 of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1222), except one (financial administration). In the Federal Act the list of priority expenditures, while broad, was meant to be a limitation on the purposes for which Federal Revenue Sharing funds could be spent. In Public Act 78-1189 the General Assembly has taken what was meant to be a limitation and used it for making a grant of power. While this results in a broad delegation of powers to townships, in general it cannot be said that such delegation is invalid.

It is an established rule that the General Assembly cannot delegate its general legislative power to determine what the law shall be; however, as stated by the court in Hill v. Relyea, 34 Ill. 2d 552:

* * * [I]t may delegate to others the authority to do those things which the legislature

might properly do, but cannot do as understandingly or advantageously. (Board of Education v. Page, 33 Ill. 2d 372; People ex rel. Daesch v. Mayor of Belleville, 22 Ill. 2d 226; City of Evanston v. Wazau, 364 Ill. 198.) Absolute criteria whereby every detail necessary in the enforcement of a law is anticipated need not be established by the General Assembly. The constitution merely requires that intelligible standards be set to guide the agency charged with enforcement, (Memorial Gardens Ass'n. Inc. v. Smith, 16 Ill. 2d 116; People v. Warren, 11 Ill. 2d 420,) and the precision of the permissible standard must necessarily vary according to the nature of the ultimate objective and the problems involved. Board of Education v. Page, 33 Ill. 2d 372; People ex rel. Daesch v. Mayor of Belleville, 22 Ill. 2d 226.

* * *

It must be presumed that the General Assembly took notice of the different types of problems that affect various townships due to differences in population and geography and determined that each township could more understandably and advantageously expend both its own funds, and Federal Revenue Sharing funds, without strict legislative guidelines.

It is my opinion, therefore, that section 20, as amended by Public Act 78-1189 is, in general, valid and effective. It should be understood, however, that this Act authorizes townships to undertake the authorized programs only in cooperation with other governmental entities, not-for-profit corporations and non-profit community service organizations. Other specific

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legislation, however, may authorize townships to undertake specific programs independently. Such specific legislation, as discussed below, may also limit the grant of power in Public Act 78-1189.

You next request an opinion as to whether other statutory provisions which provide a specific method for performing a particular function remain effective in view of the authority to contract given in the Act to the board of township auditors. You also specifically inquire as to whether section 20, as amended by Public Act 78-1189, authorizes a board of town auditors to contract with the township road district for maintenance of roads without the prior approval by the electors, as required by section 1 of "AN ACT to authorize the transfer of surplus town funds to other town funds or road and bridge funds". Ill. Rev. Stat. 1973, ch. 139, par. 164.

Public Act 78-1189 is a general Act. "AN ACT to authorize the transfer of surplus town funds, etc.", supra, and other specific statutory authority providing specific methods for performing a particular function, would be considered special or local acts and most likely were passed prior to Public Act 78-1189. It is a rule of statutory construction that:

* * * [W]hen the later act is a general one, and it is contended that it repeals by implication a former special or local law, in which situation it is an established rule of construction that where two statutes treat of the same subject, one being special and the other general, unless they are irreconcilably inconsistent, the latest in date will not be held to have repealed the former, but the special will prevail in its application to the subject matter as far as coming within its particular provisions. (Covington v. City of East St. Louis, 78 Ill. 548; People ex rel. Board of Education v. Mayor of Bloomington, 130 Ill. 406; Kuenster v. Board of Education, 134 Ill. 165; Trausch v. County of Cook, 147 Ill. 534; Village of Ridgway v. County of Gallatin, 181 Ill. 521.) The rule is strongly stated in People ex rel. Hoyne v. Sweitzer, 266 Ill. 459, as follows: 'It is only in cases where a statute is expressly repealed or where all cases are removed from under its operation, and the statute is thereby entirely abrogated by a later act, that the former act is repealed by the later one.' * * * " (Rosehill Cemetery Co. v. Lueder, 406 Ill. 458 at p. 467.)

The reason for this rule has been well stated by the Supreme Court in The People v. Mack, 367 Ill. 481 at 486, as follows:

* * * When the legislature treats a subject in a general manner it is not reasonable to suppose that it intends to abrogate particular legislation, to the details of which it has previously given attention, applicable only to a part of the same subject, unless the general act shows a plain intention so to do. * * * "

Section 20, as amended, is intended to allow townships to expend Federal Revenue Sharing funds. If townships had previous specific authority to expend their own funds for a

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purpose which could be classified as a priority expenditure, it had the necessary authority to expend Federal Revenue Sharing funds. The purpose of section 20, as amended, is only to give them additional authority to expend money in the priority categories, if it did not have prior statutory authority. The General Assembly did not intend by this broad grant of power in section 20, as amended, to repeal by implication any existing detailed statutes. The legislation shows no intent to revise categorically township law.

I, therefore, am of the opinion that in general, other statutory provisions which provide a specific method for performing a particular function remain effective. The extent to which such specific provisions remain effective, however, depends upon the specific statute and factual situation.

I am also of the opinion that section 1 of "AN ACT to authorize the transfer of surplus town funds etc.", supra, remains effective and prior approval by the electors is necessary for a transfer of town funds to the general road and bridge fund. Although this Act specifically provides for the transferring of town funds to the road and bridge fund, while section 20, as amended, provides for using town funds to contract for the ordinary and necessary maintenance and operating

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expenses for public transportation, to the extent that such expenditures for public transportation include maintenance of streets and roads, town money is being used for the same purpose. Therefore, the requirement of approval by the electors for the use of town funds for this purpose must be observed.

Very truly yours,

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