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62706

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I - 90-046

COUNTIES:  
Legal Representation and Competitive  
Bidding Requirements for County  
Emergency Telephone System Boards

Honorable Thomas F. Baker  
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Honorable William E. Herzog  
State's Attorney, Kankakee County  
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Dear Mr. Baker and Mr. Herzog:

I have your letters regarding Emergency Telephone System Boards established by counties pursuant to the provisions of the Emergency Telephone System Act (Ill. Rev. Stat. 1989, ch. 134, par. 30.01 et seq.). State's Attorney Baker inquires whether it is the duty of the State's Attorney to provide legal representation to an Emergency Telephone System Board, and whether the county has a duty to defend and/or indemnify the Board. State's Attorney Herzog inquires whether the contracts of an Emergency Telephone System Board are subject to the competitive bidding requirements applicable to counties, and whether the provisions of the Open Meetings Act (Ill. Rev. Stat. 1989, ch. 102, par. 41 et seq.) apply to these Boards. Because of the nature of your inquiries, I do not

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believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

In response to State's Attorney Baker's inquiry regarding legal representation, the State's Attorney is the attorney and legal advisor for the county. (Ashton v. County of Cook (1943), 384 Ill. 287, 299-300.) It is the State's Attorney's duty, pursuant to statute, to represent county officers in relation to matters in which the people of the State or the county may be concerned. (Ill. Rev. Stat. 1989, ch. 34, par. 3-9005.) The duty to represent, therefore, is contingent upon whether an Emergency Telephone System Board (hereinafter "ETS Board") established by a county is an office or agency of the county.

Subsection 15.4(a) of the Emergency Telephone System Act (Ill. Rev. Stat. 1989, ch. 134, par. 45.4(a)), which governs the establishment of ETS Boards, provides, in pertinent part:

"(a) The corporate authorities of any county or municipality that imposes a surcharge under Section 15.3 shall establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that the board shall consist of not fewer than 5 members \* \* \*

\* \* \*

"

Under subsection 15.4(a), the county has not only the authority to create a single county ETS Board, but also the power to determine the number of members of the board and the method of their appointment.

A single county ETS Board is not denominated a body politic and corporate. Consequently, the entity could not sue or be sued in its own name. (Maves v. Elrod (N.D. Ill. 1979), 470 F. Supp. 1188, 1192; Lilly v. County of Cook (1978), 60 Ill. App. 3d 573, 579-80.) Although an ETS Board is granted certain statutory powers exercisable only by its governing board, the powers and duties of a single county ETS Board are defined by the county:

" \* \* \*

(b) The powers and duties of the board shall be defined by ordinance of the municipality or county, or by intergovernmental agreement in the case of a joint board. Such powers and duties shall include, but need not be limited to the following:

(1) Planning a 9-1-1 system.

(2) Coordinating and supervising the implementation, upgrading or maintenance of the system, including the establishment of equipment specifications and coding systems.

(3) Receiving monies from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.

(4) Authorizing all disbursements from the fund.

(5) Hiring, on a temporary basis, any staff necessary for the implementation or upgrade of the system.

" \* \* \*  
(Ill. Rev. Stat. 1989, ch. 134, par. 45.4(b).)

The funding of the ETS Board is also dependent upon the county since the Board has no independent powers of taxation. After approval by referendum, the county is authorized to levy a surcharge for the 9-1-1 System. (Ill. Rev. Stat. 1989, ch. 134, par. 45.3(a).) The county board, however, is not required to levy the full amount of the surcharge approved by referendum, but may determine at its own discretion the amount to be raised:

" \* \* \*

(e) A municipality or county may at any time by ordinance change the rate of the surcharge imposed under this Section if the new rate does not exceed the rate specified in the referendum held pursuant to subsection (c).

" \* \* \*  
(Ill. Rev. Stat. 1989, ch. 134, par. 45.3(e).)

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The fiscal relationship between the ETS Board and the county is similar to that which exists between the county and other county agencies. For example, in opinion No. 80-032, issued September 25, 1980 (1980 Ill. Att'y Gen. Op. 127), Attorney General Fahner determined that the Care and Treatment Board for Certain Mentally Deficient Persons (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201 et seq.) was an agency of the county. With respect to the county's authority to exercise control over funds levied for the Care and Treatment Board, Attorney General Fahner observed:

" \* \* \*

\* \* \* the exclusive power to exercise control over funds raised through a tax levy does not impair the right of a taxing body to determine the total amount of money to be raised. (Schlaeger v. Jarmuth (1947), 398 Ill. 60; Ickes v. Macon County (1953), 415 Ill. 557.) In Effertz v. Brzezinski (1968), 91 Ill. App. 2d 202, the court was asked to consider whether the directors of a library board had the authority to determine the amount of money to be raised by tax levy for library purposes. Under the Library Act, the board had exclusive control of all money deposited in the library fund. The court held at page 207 that a:

\* \* \*

'\* \* \* village board may not refuse to levy any taxes for library purposes and, presumably, the amount must be fair and reasonable. However, there is no requirement in the language or spirit of the Act that the village board must honor the recommendation of the library board as to the amount to be appropriated and levied \* \* \*.

\* \* \*

In my opinion, a similar result obtains under the Care and Treatment Act. Once the tax is levied, however, the county board may not direct the manner in which funds are expended. There is no language in the Act authorizing the county board to exercise control over the Mentally Deficient Persons' Fund, nor is there a requirement that

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the budget of the Care and Treatment Board be submitted to the county board for approval.

\* \* \*

(1980 Ill. Att'y Gen. Op. 127, 129-130.)

Like the Care and Treatment Board, the ETS Board has sole control of the expenditure of funds once they have been appropriated by the county:

"

\* \* \*

(c) All monies received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into an Emergency Telephone System Fund. The treasurer of the municipality or county that has established the board or, in the case of a joint board, any municipal or county treasurer designated in the intergovernmental agreement, shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. \* \* \*

\* \* \*

(Emphasis added.) (Ill. Rev. Stat. 1989, ch. 134, par. 45.4(c).)

Because the county board exercises authority over a single county ETS Board through its powers to create the Board, appoint its members and control the level of its funding, it appears that the Board is an agency of the county. (See also 1974 Ill. Att'y Gen. Op. 107; 1973 Ill. Att'y Gen. Op. 108 (county health department is a county agency); opinion No. NP-813, issued October 15, 1974 (regional planning commission is county agency); 1977 Ill. Att'y Gen. Op. 71 (road district is not a county agency); 1973 Ill. Att'y Gen. Op. 181 (forest preserve district does not constitute a county agency); and 1970 Ill. Att'y Gen. Op. 111 (community mental health board is an agency of the county).) Although it possesses certain powers which only the ETS Board may exercise, the Board is not an autonomous, independent unit of government. Accordingly, as a county agency, it appears that it is the duty of the State's Attorney to provide legal representation to an ETS Board which is established by the county.

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Given this analysis, I believe that it is unnecessary to address at length State's Attorney Baker's second inquiry regarding a county's duty to defend the ETS Board. As to the question of indemnification, counties are granted discretionary authority to indemnify officers and employees of the county for judgments based on tortious conduct arising out of the scope of their service. (Ill. Rev. Stat. 1989, ch. 85, par. 2-302; 1982 Ill. Att'y Gen. Op. 18, 19.) Because a county ETS Board is as an agency of the county, it appears that the county board may elect to indemnify the officers and employees of the ETS Board for the aforementioned conduct.

In response to State's Attorney Herzog's inquiry regarding whether the contracts of a county ETS Board are subject to competitive bidding requirements, section 5-1022 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1022) provides as follows:

"Competitive bids. Any purchase by a county with fewer than 2,000,000 inhabitants of services, materials, equipment or supplies in excess of \$10,000, other than professional services, shall be contracted for in one of the following ways:

(1) by a contract let to the lowest responsible bidder after advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county; or

(2) by a contract let without advertising for bids in the case of an emergency if authorized by the county board.

In determining the lowest responsible bidder, the county board shall take into consideration the qualities of the articles supplied, their conformity with the specifications, their suitability to the requirements of the county and the delivery terms.

This Section does not apply to contracts by a county with the federal government or to purchases of used equipment, purchases at auction or similar transactions which by their very nature are not suitable to competitive bids, pursuant to an ordinance adopted by the county board."

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Under this provision, competitive bidding is required for county purchases of services, materials, equipment or supplies exceeding \$10,000, other than professional services. Because a county ETS Board is, as previously discussed, an agency of the county, it appears that contracts for the 911 telephone system would be subject to the competitive bidding requirements of section 5-1022, unless they are exempt under the professional services exception.

In response to State's Attorney Herzog's second question, the Open Meetings Act (Ill. Rev. Stat. 1989, ch. 102, par. 41 et seq.) requires that all meetings of public bodies be open to the public, subject to certain limited exceptions. (Ill. Rev. Stat. 1989, ch. 1.2, par. 42.) Section 1.02 of the Act (Ill. Rev. Stat. 1989, ch. 102, par. 41.02) defines the term "public body" to include:

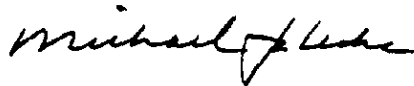
" \* \* \*

\* \* \* all legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue \* \* \*"

Under this statutory definition, it is clear that a county ETS Board is a public body for purposes of the Act. As such, the provisions of the Open Meetings Act would apply to the meetings of ETS Boards.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



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