WILLIAM G. CLARK
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

UP-683

July 25, 1962

OFFICERS:
County Fee Officer -
Power to Borrow Money

Honorable John M. Karns, Jr.
State's Attorney
St. Clair County
Court House
Belleville, Illinois

Dear Mr. Karns:

I have your communication of July 18, 1962, wherein you request my opinion as to whether a County Fee Officer has the power to borrow money to meet his payroll and office expenses.

Article X, Section 10 of the Illinois Constitution is as follows:

"The county board, except as provided in Section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses in such manner and subject to such limitations as may be prescribed by law, and in all cases where fees

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> are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected: Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the County Treasury."

The Supreme Court of Illinois in the case of Coles County v. Messer, 195 Ill. 540, in construing this constitutional provision held that the office expenses of a County Fee Officer can only be paid out of the fees collected.

It therefore appears clear that the office expenses of a County Fee Officer can only be paid from the fees actually collected and that a County Fee Officer under this constitutional provision could not borrow money in order to meet the office expenses.

In addition thereto, I find no statute which authorizes a County Fee Officer to borrow money for any purpose.

In the case of Diederich v. Rose, 228 Ill. 610, the Supreme Court held that statutes delegating powers to public officers must be strictly

construed and all parties interested must look to the statute for grant of power.

Even if the Constitution did not prohibit the borrowing of funds by a County Fee Officer, there is no statute which would authorize such officers to borrow money.

Very truly yours,

Attorney General

by warehouse receipts, deposit receipts, shipping documents, trust receipts, participation certificates, mortgages, conditional sale agreements, and *such other or different instruments of title or of lien as may establish the bank's ownership in or lien upon the underlying security.*" (Emphasis added)

The emphasized portion, "other or different instruments of title or of lien as may establish the bank's ownership of or lien upon the underlying security" clearly include a deed given as security for a loan.

An absolute deed given for security purposes, is to be considered a mortgage. (Ill. Rev. Stat. 1961, chap. 95, par. 13).

Section 9-102 of the Uniform Commercial Code, (Ill. Rev. Stat. 1961, chap. 26, par. 9-102(2), clearly recognizes that a security interest may be created by a "title retention contract and lease or consignment intended as security." This would appertain to personal property security.

The "purchase-lease back" arrangement, whether real estate or personal property, would appear to be a security device which is authorized by section 36. When one pierces the veil or tears aside the mask of this purchase-lease back transaction, one finds a loan on security.

The purchase-lease back transaction will be subject to the basic loaning limits set forth in Section 32 of the Illinois Banking Act, (Ill. Rev. Stat. 1961, chap. 16½, par. 132), unless excluded from such loan limits by section 34, which provides in part as follows:

"The limitations in Sections 32 and 33 of this Act, upon the liabilities of any one person and upon the purchase and holding of marketable investment securities shall not apply:

* * * *

"(4) To the obligations as endorser or guarantor of negotiable or *non-negotiable installment paper* which carries a full recourse endorsement or *unconditional guarantee* by the person transferring the same if the bank's files or the knowledge of its officers *of the financial condition of each maker of such obligations* is reasonably adequate, and if an officer of the bank, designated for that purpose by the board of directors of the bank, *certifies that the responsibility of each maker* of such obligations has been evaluated and that the bank if relying primarily upon each such maker for the payment of such obligations. Such certification shall be in writing and shall be retained as part of the records of the bank." (Emphasis added)

The quoted provisions in Section 34(4) are very similar to the provisions in Exception (13) of Title 12, U.S.C., paragraph 84, which excepts from the ten per centum limit of liability of any person to a national bank the following:

"(13) Obligations as endorser or guarantor of negotiable or non-negotiable *installment consumer paper* which carries a full recourse endorsement or unconditional guarantee by the person, copartnership, association, or corporation transferring the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus: Provided, however, That if the bank's files or the knowledge of its officers of the financial condition of each maker of such obligation is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank,

that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each such maker shall be the sole applicable loan limitation: *Provided further*, That such certification shall be in writing and shall be retained as part of the records of such bank." (Emphasis added)

Exception (13) is limited to "installment consumer paper." This has apparently been construed by the Comptroller of the Currency as limiting the exception to personal property. Section 34(4) of the Illinois Banking Act is not limited to consumer paper. It is thus not limited to personal property transactions.

I conclude that the loan limits in Section 32 would not be applicable to the "purchase-lease back" transaction, whether of real estate or personal property, in the event that the provisions of Section 34(4) were followed, i.e., if there were an unconditional guarantee by the transferor, and if the other provisions in Section 34(4) are followed.

In specific answer to your question, it is my opinion that a "purchase-lease back" transaction, as described by you, whether of real estate or personal property, would fall within the loan powers of a state bank. The exception in section 34(4) of the Illinois Banking Act to the basic loan limits in Section 32, would apply to such "purchase-lease back" transaction.

(F-1052—November 5, 1963)

COUNTIES AND COUNTY BOARDS—*County Jail.* A county under township organization has authority to build a new jail without a referendum.
COUNTIES AND COUNTY BOARDS—*County Jail.* A county under township organization may issue orders payable on certain dates in the future to provide funds to build a county jail, such orders being neither payable on demand nor anticipation warrants, and where the indebtedness does not exceed prescribed limitations.
STATUTES CONSTRUED—Illinois Revised Statutes 1963, Chapter 34, Paragraph 432.

Hon. William A. Miller, State's Attorney, Marion County, Salem:

I have your communication requesting my opinion on the following questions:

"1. Has the County the authority to build a new jail without a vote of the people of the County?

"2. Has the County Board authority to issue warrants payable on certain dates in the future for the building of a county jail, such orders not being orders payable on demand out of funds in the county treasury, nor anticipation warrants issued to anticipate the collection of taxes already levied and payable out of the same."

You have advised that you are familiar with the Opinion appearing at page 241 of the printed Attorney General's Report and Opinions for 1934. In this Opinion it was held that a county under township organization had authority to build a jail without a vote of the people, and secondly, that orders payable on certain dates in the future, not

being payable on demand nor anticipation warrants, might be issued by the county to provide for the building of a county jail. I will direct your further attention to my Opinion No. 107 found at page 264 of the 1961 Opinions in which I concurred with these conclusions.

Your attention is directed also to my Opinion to you under date of December 18, 1961, concerning the construction of a county jail. For your information, I am enclosing a copy of my Opinion No. UP-804 issued to the Honorable Louis A. McLaughlin, State's Attorney, Fayette County, under date of December 21, 1962, which pertains to providing a county jail.

I have examined the provisions of Chapter 34, Paragraph 432, Illinois Revised Statutes, as amended by the Seventy-Third General Assembly, and conclude that a county under township organization continues to have authority to build a new jail without a referendum.

In considering your second question, I will direct your attention to the case of *County of Hamilton* v. *Sloan,* 387 Ill. 24, in which the Supreme Court of Illinois said at page 29:

"* * * The complaint discloses that, in 1930 and 1931, the county of Hamilton was without suitable facilities for courthouse and other purposes essential to the transaction of its affairs. Confronted with this emergency, a duty rested upon the county board to take appropriate action to remedy the existing deficiency. Sections 24, 25 and 26 of 'An Act to revise the law in relation to counties' (Ill. Rev. Stat. 1943, chap. 34, pars. 24-26,) confer ample power upon the county board for this and like purposes. In the exercise of these powers, the county board is vested with discretion to determine the necessity and the financial ability of the county to assume such obligations without a previous levy, being bound only by the constitutional provision prohibiting it from incurring indebtedness beyond prescribed limitations. * * *"

By reason of the foregoing I am of the opinion that a county under township organization may issue orders payable on certain dates in the future for the building of a county jail, such orders being neither payable on demand nor anticipation warrants, where the indebtedness does not exceed prescribed limitations.

(F-1054—November 5, 1963)

OFFICERS:—*Justices of the Peace—Special Election Prohibited.* The statute prohibits any special election to fill any vacancy in the office of justice of the peace where the vacancy exceeds one year, and the County Board is not authorized to make any appointment in such a case.

STATUTES CONSTRUED—Illinois Revised Statutes 1963, Chapter 79, Paragraph 7.1.

Hon. Ralph D. Glenn, State's Attorney, Coles County, Charleston:

I have your communication of October 25, 1963, wherein you state as follows:

"Ralph E. Suddes, one of our elected Justices of the Peace died recently and his term would have expired in April, 1965. Chapter 79, Section 7 provides that a special election should be held if more than one year remains in the term. It further provides that if the unexpired term does not exceed one year the vacancy should be filled by the County Board. Chapter 79, Section 7.1 which became effective July 31, 1963, provides in substance that no special election shall be held to fill the vacancy. My question simply is this: Is the vacancy filled, and if so, is it filled by appointment by the County Board?"

House Bill 1331, enacted by the Seventy-third General Assembly and approved on July 31, 1963, added Section 7.1 to "An Act to revise the law in relation to justices of the peace and constables", approved June 26, 1895, as amended, and is as follows:

"Sec. 7.1. Notwithstanding the provisions of Section 7 of Article I of this Act no special elections shall be held at any time, to fill a vacancy in the office of Justice of the Peace, in any Justice District in a county, whether or not a vacancy existed prior to the effective date of this amendatory Act of 1963." (Smith-Hurd Ill. Ann. Stats. 1963, Supplement No. 5, Chapter 79, Paragraph 7.1)

The above statutory provision prohibits the holding of any special election for a justice of the peace under Section 7 of the Act.

No appointment to fill the vacancy can be made by the County Board as the vacancy was for more than one year.

House Bill 1331 also contained an emergency clause which is as follows:

"Section 2. Whereas the number of Justices of the Peace who will become Magistrates of the Circuit Court after January 1, 1964 is already unnecessarily large; and whereas, unneeded magistrates will add unjustified state expenses for salaries for such unneeded magistrates; and whereas, studies of case loads of Justice Districts do not justify the filling of vacancies, and whereas, the Judicial Amendment upon becoming effective January 1, 1964 provides for the appointment of additional magistrates whenever necessary, therefore, the election of Justices of the Peace to fill any vacancies is not justified; therefore an emergency exists and this Act shall take effect upon its becoming a law."

(F-1055—November 5, 1963)

COUNTIES—*Regional Planning Commission.* A Regional Planning Commission established pursuant to the Regional Planning Commission Act of 1929 (Ill. Rev. Stat. 1961, ch. 34, par. 3001 *et seq.*) possesses the power to sue in its own name in a court of law on contracts executed by it within the authority conferred upon it by statute.

STATUTES CONSTRUED—Illinois Revised Statutes 1961, chapter 34, paragraph 3001 *et seq.*

Hon. James V. Cunningham, State's Attorney, County of Peoria, Court House, Peoria:

I have your letter of October 18, 1963, which states as follows:

"Peoria, Tazewell and Woodford Counties have formed the Tri-County Regional Planning Commission under the provisions of Sec. 3001-3005 of Chapter 34, Illinois Revised Statutes.

Your opinion is requested on the following questions relating to the powers of the Tri-County Regional Planning Commission:

(1) Does the Tri-County Regional Planning Commission have the power to sue in its own name in a Court of Law?

Such tax shall not be levied for more than 5 years, except that if the same procedure is followed as is provided in this Act for the original levy, the tax may be levied for an additional period not to exceed 5 years."

It is seen that the fund in question is used for the purpose of providing housing for county offices and departments. From the information you have supplied, it appears that the airport is operated by the county pursuant to authority granted by Illinois Revised Statutes 1963, Chapter 15½, Paragraph 69, which provides:

"Every county has the power to acquire, own, construct, manage, maintain and operate airports and landing fields, together with all land, appurtenances, and easements, required therefor or deemed necessary and useful in connection therewith and in accordance with the purposes expressed in this section, including structures of all kinds."

Likewise, counties are authorized to provide and maintain a county nursing home (Illinois Revised Statutes 1963, Chapter 34, Paragraph 303). It is clear that in each of the situations which you have set forth, the county is specifically authorized to engage in such undertakings. Also, the "County Offices Fund" is to provide housing for county offices and departments. The Act does not define the meaning of "department" and, therefore, it is to be given its generally accepted meaning. *Stiska* v. *City of Chicago*, 405 Ill. 374-379. "Department" is defined in Webster's New International Dictionary, Second Edition, as:

"A division or branch of governmental administration, national or municipal; * * *"

It is my opinion that "department", as used in this Act, is a term broad enough to include both a county airport and a county nursing home, and therefore expenditures may be made from the "County Offices Fund" for building and repairing structures for such purposes.

(No. F-1414—August 18, 1965)

COUNTIES AND COUNTY BOARDS—*Waterworks.* Counties may construct or purchase and operate a waterworks system.

COUNTIES AND COUNTY BOARDS—*Waterworks.* County property may not be encumbered by a mortgage for the purpose of purchasing a waterworks system, but revenue bonds may be issued as authorized by statute.

STATUTES CONSTRUED—Illinois Revised Statutes 1963, Chapter 34, Paragraph 3117.

Hon. Bruno W. Stanczak, State's Attorney, Lake County, Waukegan:

I have your letter of July 16th advising that Lake County is contemplating the purchase of an existing water company and requesting my opinion whether or not the purchase may be financed by a note and mortgage upon the property which would be paid from the revenues of the system.

Under the provisions of "An Act in relation to water supply, drainage, sewage, pollution and flood control in certain counties", approved July 22, 1959, counties are authorized to construct or purchase and

operate a waterworks system and they may acquire both real and personal property for such purposes. Section 11 (Ill. Rev. Stat. 1963, ch. 34, par. 3111) provides in part:

"The county is hereby authorized to construct or purchase and operate a waterworks system or a sewerage system or a combined waterworks and sewerage system and to improve or extend any such system so acquired from time to time, as provided in this Act. * * *"

As you have noted, Section 6 provides in part:

"* * * shall have the right to hold, encumber, control, to acquire by donation, purchase or condemnation, to construct, own, lease, use and sell real and personal property. * * *"

You have advised that the county would become the owner of the property and would then give a mortgage to secure the payment of the purchase price. It appears that the county would expect to make its payments from the revenues of the system although it does not contemplate the issuance of revenue bonds as authorized by Section 17. This Section also contains the following provision:

"* * * * * * *

"*Under no circumstances shall* any bonds issued or *any other obligation*, except as set forth in Section 2 of this Act, *incurred pursuant to the provisions of this Act be or become an indebtedness or an obligation of the county payable from taxes and shall not in any event constitute an indebtedness of such county* within the meaning of the constitutional provisions or limitations, and such fact shall be plainly stated on the face of each bond." (Emphasis Supplied)

The constitutional limitation upon indebtedness is found in the Illinois Constitution, Article 9, Section 12, which reads as follows:

"No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. The section shall not be construed to prevent any county, city, township, school district, or other municipal corporation from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor."

From the facts you have stated it does not appear that an indebtedness is intended which would be required to be paid by a direct annual tax. However, it does appear that a mortgage is intended to be placed upon property owned by the county. A mortgage is security for a debt or the performance of some act and is evidence of an indebtedness or obligation (27 I.L.P. Mortgages §2). In view of the provisions of Section 17 prohibiting the county from incurring an indebtedness under the act in question, it is my opinion that county property may not be encumbered by a mortgage in order to purchase a waterworks

system as proposed, but it is my further opinion that a county may purchase a waterworks system and revenue bonds may be issued as authorized by said Section 17.

(No. F-1415—August 18, 1965)

COUNTIES AND COUNTY BOARDS—*Parliamentary Procedure.* In the absence of statutory direction, county boards may adopt rules governing procedure.

COUNTIES AND COUNTY BOARDS—*Parliamentary Procedure.* County boards have discretion to adopt a reasonable rule governing the procedure for calling the roll.

Hon. Alton A. Greer, State's Attorney, Shawneetown:

I have your recent letter advising that your county has adopted township organization and that the County Clerk is the Clerk of the Board of Supervisors. You request my opinion whether the Clerk should call the roll alphabetically by name or by Townships when a vote is to be taken upon a proposition before the County Board.

County Boards in the absence of statutory direction are authorized to adopt rules governing procedure, *Matthews, et al,* v. *Commissioners, etc.,* 87 Ill. 590.

I have examined the statutory provisions to which you referred and I find no statute governing the manner in which a roll call vote is to be taken. The general rule is stated in 67 C.J.S. 870 as follows:

"Rules of parliamentary practice are merely procedural and not substantive. The rules of procedure adopted by deliberative bodies have not the force of a public law, but they are merely in the nature of by-laws, prescribed for the orderly and convenient conduct of their own proceedings. The rules adopted by deliberative bodies are subject to revocation, modification, or waiver at the pleasure of the body adopting them. Where a deliberative body adopts rules of order for its parliamentary governance, the fact that it violates one of the rules so adopted may not invalidate a measure passed in compliance with statute. * * * *"

It is my opinion that the County Board has discretion to adopt any reasonable rule which it may desire governing the procedure for calling the roll.

(No. F-1418—August 20, 1965)

OFFICERS—*Merit System—Deputy Sheriffs in Counties of Over 100,000 and Less Than 500,000 Population.*

STATUTORY CONSTRUCTION—In the absence of statutory definitions indicating different legislative intention, courts will assume that words have their common dictionary meaning or their popularly understood meaning.

STATUTORY CONSTRUCTION—The words "all deputies", as used in Senate Bill 293, mean each and every deputy sheriff in the office of sheriff.

Hon. William R. Ketcham, State's Attorney, Kane County, Elgin:

I have your communication of recent date wherein you state as follows:

"Senate Bill No. 293 was duly enacted into law during the last session of the State Legislature. As you know, this bill amends Chapter 34 by adding thereto Section 58.1, which provides that any County having a population of 100,000 or

more, but less than 500,000, may, by ordinance, provide for all deputies in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a standard pay plan approved by the Board.

"Since the population of the County of Kane exceeds 100,000 and is less than 500,000, the County Board of said County has the legislative authority to enact the ordinance permitted by said Section 58.1. It appears, however, that certain deputies in the office of the Sheriff only perform duties which are essentially administrative in nature, such as the bailiffs, process servers, radio operators and jailers. The other deputies perform duties which may more accurately be described as law enforcement duties, such as highway patrol, criminal investigation and the like.

"I have been requested by our County Board of Supervisors to seek your opinion upon the question of whether the language 'all deputies in the office of Sheriff' set forth in Section 58.1 of Chapter 34 includes only the deputies who perform law enforcement duties, or was it the legislative intent that Section 58.1 include within its coverage all deputies in the office of the Sheriff regardless of what their duties may be?"

In the absence of statutory definitions indicating different legislative intention, courts will assume that words have their common dictionary meaning or their popularly understood meaning. *Conlon-Moore Corp.* v. *Cummins,* 28 Ill. App. 2d 368, affirmed 23 Ill. 2d 341; *Stice* v. *Beard,* 46 Ill. App. 2d 304.

Webster's Second International Dictionary defines the word "all" in part as follows:

"Every member or individual component of; each one of;—used with a plural noun. In this sense, *all* is used generically and distributively, meaning that a statement is true of every individual or case; as, *all* men are mortal."

Applying the above rule of statutory construction to the question under consideration, it is obvious that the words "all deputies", as used in Senate Bill 293, which was approved on June 22, 1965, mean each and every deputy sheriff in the office of the sheriff.

However, as you make reference to jailers, I direct your attention to Illinois Revised Statutes 1963, Chapter 75, Paragraphs 2, 3, and 3a, which were not amended by the Seventy-fourth General Assembly, and are as follows:

"2. The sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in such jail."

"3. He may appoint a superintendent of the jail, and remove him at pleasure, for whose conduct he shall be responsible."

"3a. Employees who are charged with the care and custody of prisoners shall be known as jail officers."

From the above statutory provisions, it is clear that persons employed by the warden of the jail charged with the care and custody of prisoners are jail officers and not deputy sheriffs.

(No. F-1425—September 1, 1965)

COUNTIES AND COUNTY BOARDS—*County Employees.* Statutes do not give a county board power to fix a maximum age for appointment or a compulsory age for retirement of county employees.

WILLIAM G. CLARK
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

OP1689

September 16, 1966

File No. UP 1689

COUNTIES:
Lease - Purchase of Air Conditioning
Equipment for Court House

Honorable Richard E. Richman
State's Attorney
Jackson County
Murphysboro, Illinois 62966

Dear Mr. Richman:

I have your communication of September 1, 1966, wherein you state as follows:

"The Board of Supervisors of Jackson County is contemplating centrally air conditioning the Jackson County Court House. It has been suggested that the work be done under the provisions of 1965 Senate Bill 887 (Chapter 34, Paragraph 429.14, Illinois Revised Statutes). This section provides that the county may enter into contracts to purchase or lease property.

> "The question has arisen whether the County may include in the provisions of such a contract, installation and labor fees, architect's fees, and other costs not definitely mentioned in the statute. It is proposed that the installment payments would be made out of the County Sales Tax receipts over the period of the contract.
>
> "Inasmuch as there has not yet been any reported court decision interpreting this section of the statutes, I would greatly appreciate receiving your Opinion as to whether the County of Jackson may enter into a contract for the lease-purchase of central air conditioning equipment including in said contract the cost of installation, labor, etc."

Illinois Revised Statutes 1965, Chapter 34, Paragraph 429.14, provides as follows:

> "To purchase or lease any real estate or personal property for public purposes under contracts providing for payment in installments over a period of time of not more than 10 years with interest on the unpaid balance owing not to exceed 6%. The indebtedness incurred under this Section when aggregated with existing indebtedness may not exceed the debt limits provided in Section 40 of this Act."

Section 40 of the Act above referred to is Paragraph 306 of Chapter 34 and limits the total indebtedness of a county to 5% of the value of the taxable property of the county as ascertained by the assessment for state and county taxes for the preceding year.

It will be necessary to assume that the contract price will not exceed the debt limitation as set forth in Paragraph 306 supra.

It appears clear that under Paragraph 429.14 above quoted that the county board is given the power to purchase or lease any real estate or personal property for public purposes under contracts providing for payment in installments over a period of time of not more than ten years, with interest on the unpaid balance owing not to exceed 6%.

It is the duty of a county board under Paragraph 432 of Chapter 34 to erect or provide a court house. There can be no question but that a court house is a public purpose.

The contract for the lease - purchase of air conditioning equipment completely installed in the court house would be for a public purpose and therefore comes within the provisions of the statute and the county board would have the power to enter into such a contract.

Very truly yours,

ATTORNEY GENERAL

object of the separation of regulatory power and private interest would relate to a county board member's duties solely as a member of a local liquor control commission, as set out under section 1, article IV, quoted hereinabove. Thus, the phrase "jurisdiction of that official" refers only to the territory over which the official possesses authority for the control of liquor licensing and regulation. A county board is empowered to regulate the territory in the county outside the limits of any city, village or incorporated town. Thus, the jurisdiction of a county board member with regard to liquor regulation would be the territory of his county outside any city, village or incorporated town therein.

This interpretation is further supported by considering the use of the word "jurisdiction" elsewhere within "AN ACT relating to alcholic liquors". (Ill. Rev. Stat. 1975, ch. 43, pars. 94 *et seq.*) In construing a statute to ascertain the intention of the legislature, the statute should be construed in its entirety. (*S. Bloom, Inc.* v. *Korshak*, 52 Ill. 2d 56.) The various parts, provisions or sections of a statute must be read and considered together (*Huckaba* v. *Cox*, 14 Ill. 2d 126), so as to make it harmonious and consistent in all its parts. (*People ex rel. Roan* v. *Wilson*, 405 Ill. 122.) It is therefore instructive to look at several other closely related provisions of the Act using the concept of "jurisdiction" similarly.

Section 2, article IV of the Act (Ill. Rev. Stat. 1975, ch. 43, par. 111) provides, in part:

"* * * [T]he president or chairman of the county board, shall be the local liquor control commissioner for the * * * counties, and shall be charged with the administration *in their respective jurisdictions* of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted; *but the authority of the president or chairman of the county board shall extend only to that area in any county which lies outside the corporate limits of the cities, villages and incorporated towns therein* * * *" (emphasis added.)

Section 3, article IV of the Act (Ill. Rev. Stat. 1975, ch. 43, par. 112) provides, in part:

"Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, * * *.

1. To grant and or suspend for not more than thirty days or revoke for cause all local licenses issued to persons for premises *within his jurisdiction*;

* * *

3. To receive complaint from any citizen *within his jurisdiction* that any of the provisions of this Act, or any rules or regulations adopted pursuant hereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided;" (emphasis added.)

Thus, elsewhere in the Act, the term "jurisdiction" is used narrowly to mean that territory under the regulation of an official in his capacity as regards liquor control only.

It is therefore my opinion that after July 1, 1976 a county board member is eligible for a retail liquor license in relation to premises which are not located within the territory subject to the jurisdiction of the board of which he is a member, that is, territory within the county, but outside any city, village or incorporated town therein. A county board member may have no other interest, direct or indirect, in the manufacture, sale or distribution of alcoholic liquor.

(No. S-1102—May 28, 1976)

INTERGOVERNMENTAL COOPERATION: *Power of County to Appropriate for Joint City-County Activity.* Pursuant to section 4 of the Intergovernmental Cooperation Act a county board may properly order a loan of county money to a joint waste disposal facility operated by the county and another unit of local government.

CONSTITUTION CONSTRUED: Illinois Constitution of 1970, article VII, section 10.

STATUTES CONSTRUED: Illinois Revised Statutes 1975, chapter 127, paragraph 744.

Hon. Michael M. Mihm, State's Attorney, Peoria County, Peoria, Illinois.

I have your letter wherein you state that the County Board of Peoria County and the city of Peoria have joined together in forming a joint solid waste disposal facility. You further state that a loan agreement has been arranged with the County of Peoria as the lender and the waste disposal facility as the borrower. Based on this factual situation, you pose the following questions:

1. Can the County Board of Peoria County transfer money from one fund to another and if so, for how long?
2. May the county treasurer legally initiate a transfer of funds in this situation?
3. When a temporary transfer of funds is made, can an interest charge be levied against the recipient?

You note that my opinion No. S-893 of May 5, 1975, may be helpful in this matter.

In opinion No. S-893 the question to be resolved was whether funds could be transferred for a short period of time from the county general fund to a special fund to meet the payroll of employees hired pursuant to a Federal employment training program. The money was to be returned to the general fund as soon as Federal reimbursement was received. The primary purpose behind the transfer was simply to permit the county government to pay these particular employees on the same date as regular county employees. I decided, for reasons developed in that opinion, that such transfers were permissible.

The situation you describe here is a different one, however. In this case two local governmental units have joined to form a solid waste disposal facility and you ask if one of them can loan money to that facility. There is no transfer from one county fund to another as was the case in opinion No. S-893. Instead, what is involved is a loan from one govern-

mental entity to another. Because of this I will not address myself to the specific questions you pose. Instead I will discuss the legality of a loan by the county board to the solid waste disposal facility.

Section 10 of article VII of the Illinois Constitution of 1970 states in relevant part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. * * * *Participating units of government may use their credit, revenues, and other resources to pay costs* and to service debt *related to intergovernmental activities.*" (emphasis added.)

Similarly, section 4 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, par. 744) provides:

"Any public agency entering into an agreement pursuant to this Act may appropriate funds and may sell, lease, give, authorize the receipt of grants, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish."

No question has been raised as to the validity of the agreement you describe creating a joint solid waste disposal facility. It is evident from the passages quoted above that a unit of local government, such as the County of Peoria, has the authority to appropriate money to pay costs related to joint governmental activities such as this.

It is, therefore, my opinion that if the loan you describe was properly appropriated pursuant to "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1975, ch. 34, pars. 2101 *et seq.*), then the county board may properly order the loan of these funds to the waste disposal facility.

(No. S-1103—May 28, 1976)

REVENUE: *Property Tax Exemption—Charitable Institutions.* Property being purchased by a charitable institution from a non-exempt owner under a contract for deed is currently ineligible for exemption from taxation.
STATUTES CONSTRUED: Illinois Revised Statutes 1975, chapter 120, paragraph 500.7.

Frank A. Kirk, Director, Department of Local Government Affairs, Springfield, Illinois.

I have your letter in which you pose the following question:

"Is property used exclusively for charitable purposes by a charitable organization, and being purchased by such organization from a non-exempt owner under a contract for deed, eligible for exemption from taxation?"

In my opinion the answer to your question is no.

Section 19 of the Revenue Act of 1939, as amended (Ill. Rev. Stat. 1975, ch. 120, par. 500), provides, in part:

"§ 19. All property described in Sections 19.1 through 19.24 to the extent therein limited, is exempt from taxation. * * *"

Section 19.7 of the Revenue Act of 1939, as amended (Ill. Rev. Stat. 1975, ch. 120, par. 500.7), provides, in part:

"§ 19.7 All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; * * *."

It is generally acknowledged in Illinois that statutes providing exemptions from taxation are to be strictly construed. (*Small* v. *Pangle*, 60 Ill. 2d 510.) With regard to the charitable exemption found in section 19.7 of the Revenue Act of 1939, the courts of Illinois have consistently held that in order to qualify, the property in question must *both* be owned and used by a charitable institution. *Hoffman* v. *Lehnhausen*, 48 Ill. 2d 323, 326; *Coyne Electric School* v. *Paschen*, 12 Ill. 2d 387, 397.

Thus, it is clear that until title ownership of property rests with a charitable institution, such property may not be exempt from taxation. Only when a contract for deed is satisfied and the deed has passed from a non-exempt owner to a charitable institution, may such property be considered for tax-exempt status.

Therefore, it is my opinion that property being purchased by a charitable institution from a non-exempt owner under a contract for deed, although already used exclusively for charitable purposes, is currently ineligible for exemption under section 19.7.

(No. S-1105—June 11, 1976)

COUNTIES: *County Zoning.* Questions of public policy concerning zoning may only be submitted to the electorate by filing of a proper public petition, and not by resolution of the county board.
ELECTIONS: *Submission of Propositions.* The governing body of a unit of local government may only initiate and submit to the electorate proposals for actions which are authorized by article VII of the Constitution and which require approval by referendum.
CONSTITUTION CONSTRUED: Illinois Constitution of 1970, article VII, section 11 (a).
STATUTES CONSTRUED: Illinois Revised Statutes 1975, chapter 46, paragraphs 28-1 and 28-4.

Hon. Robert J. Bier, State's Attorney, Adams County, Quincy, Illinois.

I have your letter wherein you ask whether the Adams County Board

1978, are declared to be retroactive". Thus, although Public Act 80-1270 became law after June 30, 1978, the provisions of the Act clearly evidence the legislature's intention to make the funds appropriated by the Act available for obligations incurred during FY78.

Public Acts 80-1217, 80-1219, 80-1222, 80-1224, and 80-1229 also became law after June 30, 1978. Each of these Acts provides that the amendment of the particular State agency's FY78 appropriation "shall take effect June 30, 1978, and if this Act becomes law after that date, the provisions thereof shall be retroactively applied and effective as of June 30, 1978". In view of the fact that the State agencies affected by these Acts apparently had incurred obligations in excess of their FY78 appropriations, it must be concluded that the legislature's purpose in providing for the retroactive application of these Acts was to authorize the payment of obligations that were incurred in excess of the original FY78 appropriations.

Because the legislature has expressly provided that the amendments to the FY78 appropriation Act enacted by Public Acts 80-1217, 80-1219, 80-1222, 80-1224, 80-1229, and 80-1270 are to be made available for obligations incurred during FY78, it is my opinion that during the lapse period State agencies may submit vouchers to the Comptroller which expend monies appropriated by these Acts even though the vouchers cover FY78 obligations which were incurred in excess of the original FY78 appropriations to the agencies. Furthermore, it is my opinion that when such vouchers are presented to the Comptroller, the Comptroller may draw warrants on funds appropriated by one of six amendatory Acts in question.

(No. S-1392—September 25, 1978)

FINANCE: *Authority of Municipalities and Other Local Government Bodies to Use "Interim Financing" for Farmers Home Administration Projects.* "Interim financing" for construction of Farmers Home Administration projects, if interpreted to mean borrowing without referendum or provision for payment from specified taxes, is legally available for home rule municipalities and home rule counties, is not legally available for townships, fire protection districts, or library districts, and is not clearly legally available for non-home rule municipalities or non-home rule counties.

CONSTITUTION CONSTRUED: Illinois Constitution of 1970, article VII, subsection 7(5).

J. Thomas Johnson, Acting Director, Department of Local Government Affairs, Springfield, Illinois.

You have asked my opinion on the legal authority of Illinois municipalities, counties, townships, fire protection districts, and library districts to use "interim financing" for projects under a certain Farmers Home Administration program. This program is set forth in 7 C.F.R., subpart O

(1977), entitled "Grants for Facilitating Development of Private Business Enterprises and Community Water and Waste Disposal Facilities". As set forth in 7 C.F.R. § 1823.452 (1977), these grants are to be used to finance:

"* * * industrial sites in rural areas including the acquisition and development of land and the construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, transportation serving the site, utility extensions, necessary water supply and waste disposal facilities, pollution control and abatement incidental to site development, fees * * *."

Under the regulations, the grantee is required to use short-term borrowing to finance the construction—for which the grantee will be reimbursed after completion—if such short-term borrowing is legal and can be obtained at a "reasonable" interest rate. If such short-term borrowing is not legal, the Farmers Home Administration may make multiple advances of money to the grantee.

Although the regulations do not precisely define the term "interim financing", I interpret it to mean borrowing by either of two methods: (1) a conventional loan from a source such as a bank, or (2) the issuance of short-term bonds without a referendum and without the necessity of providing for their payment from specific taxes. Furthermore, since knowledgeable lenders would not supply such funds unless the grantee had clear legal authority to borrow them, I interpret your request to ask whether clear authority for such borrowing exists. It is my opinion that none of the local governmental units you mention, except for those counties and municipalities that are home rule units, clearly have such authority.

The Illinois Constitution of 1970, in article VII, subsection 6(a), provides that a county having a chief executive officer elected by the people of the county, any municipality of more than 25,000 population, and any municipality so electing by referendum, shall be home rule units. This subsection then provides that:

"* * * Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; *and to incur debt.*" (Emphasis added.)

In *Kanellos* v. *County of Cook* (1972), 53 Ill. 2d 161, the Illinois Supreme Court held that this provision authorizes home rule units to borrow money unless limited by a statute passed by the General Assembly under article VII, subsection 6(g):

"(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section."

Furthermore, the Illinois Supreme Court held in *Stryker* v. *Village of Oak Park* (1976), 62 Ill. 2d 523, 528, that "[a] statute intended to limit or deny home rule powers must contain an express statement to that effect.

Rozner v. *Korshak*, 55 Ill. 2d 430." Since the General Assembly has passed no such statute under the 1970 Constitution, the power of home rule counties and municipalities to incur debt has not been limited.

The situation is not as clear for non-home rule units, however. Before the 1970 Constitution, it was the general rule that counties and municipalities had only powers allowed them by the legislature. (*City of Ottawa* v. *Brown* (1939), 372 Ill. 468, 471; *County of Stark* v. *County of Henry* (1927), 326 Ill. 535, 537.) As to municipalities, there are numerous sections in the Illinois Municipal Code that authorize issuance of bonds, but I have found none that authorize borrowing without either a referendum or repayment from a specific tax. For example, section 8-1-3 of the Code (Ill. Rev. Stat. 1977, ch. 24, par. 8-1-3) allows municipalities to incur debt for corporate purposes, but requires the levy of a "direct annual tax" sufficient to pay off the debt within 20 years. Section 8-1-11 of the Code (Ill. Rev. Stat. 1977, ch. 24, par. 8-1-11) and "AN ACT to authorize units of government of the State of Illinois to issue full faith and credit tax anticipation notes" (Ill. Rev. Stat. 1977, ch. 85, par. 821 *et seq.*) authorize issuance of tax anticipation warrants or notes, but these, as their name implies, may be issued only against specific taxes that have been levied. Sections 8-4-25, 8-5-16, and 8-7-2 of the Municipal Code (Ill. Rev. Stat. 1977, ch. 24, pars. 8-4-25, 8-5-16, 8-7-2) allow issuance of notes or bonds, but require a tax to pay off such debt. Sections 11-129-1 *et seq.*, 11-139-1 *et seq.*, and 11-141-1 *et seq.* of the Municipal Code (Ill. Rev. Stat. 1977, ch. 24, pars. 11-129-1 *et seq.*, 11-139-1 *et seq.*, 11-141-1 *et seq.*) authorize municipal bonds for water or sewer systems, but set requirements for repaying the bonds from revenues of such projects.

Article VII, section 7 of the 1970 Constitution provides as follows:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers * * * (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; * * *."

It can be argued that this provision is an affirmative grant of authority to non-home rule units to borrow money except as explicitly limited by law. However, no reported court decision has addressed this question, and the debates of the 1970 Constitutional Convention shed little light on the exact meaning of the provision. (*See,* 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3218 (remarks of Delegate Tomei); 5 Proceedings 4191 (remarks of Delegates Stahl and Parkhurst).) Although the General Assembly has passed no Act stating in effect that non-home rule municipalities may incur debt only as authorized by statute, it has apparently intended that rule to apply, for in the period since the 1970 Constitution took effect it has amended or added to many of the sections cited above that authorize specific kinds of borrowing. Given this history, it is not clear whether the courts would interpret article VII, section 7 to allow all borrowing not explicitly limited by statute. Because of that uncertainty, non-home rule municipalities would not, as a practical matter, be able to find lenders for interim financing.

Turning to counties, as discussed above, a home rule county may borrow money except as explicitly limited in a statute passed by three-fifths of the members elected to each house of the General Assembly. At present, Cook County is the only Illinois county with home rule powers. As to all other counties the discussion above concerning the uncertain legality of borrowing not specifically authorized by statute applies. A number of statutes, such as section 40 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, par. 306) and "AN ACT in relation to the issuance of revenue bonds by certain counties for public hospitals" (Ill. Rev. Stat. 1977, ch. 34, par. 2291 *et seq.*) authorize counties to issue bonds, but only if approved by referendum or only for specific purposes and with provision for use of taxes or revenue to pay them off. In the absence of a favorable reading of article VII, section 7, of the Constitution, non-home rule counties too would be able to borrow money only in the limited situations allowed by statute, which would not meet the conditions for interim financing listed above.

The three other kinds of units of local government you have mentioned—townships, fire protection districts, and library districts—are controlled by article VII, section 8, which grants them only the powers given by statute. Concerning townships, there are several statutes allowing them to issue bonds in specified situations, but none which give the kind of unrestricted authority that is needed for interim financing. "AN ACT in relation to township community buildings" (Ill. Rev. Stat. 1977, ch. 139, par. 152 *et seq.*) allows issuance of bonds for the purpose set forth in its title, but only if approved by referendum. "AN ACT authorizing any town having a population of less than 500,000 to establish *** a public hospital" (Ill. Rev. Stat. 1977, ch. 139, par. 160.6 *et seq.*) allows issuance of bonds for hospitals but requires the levy of a tax to pay the bonds. "AN ACT in relation to waterworks systems, etc." (Ill. Rev. Stat. 1977, ch. 139, par. 160.31 *et seq.*) allows issuance of bonds for such systems, but they are required to be revenue bonds payable only from the income of such a system. "AN ACT to enable boards of directors of public libraries to borrow money for the erection or improvement of library buildings or to purchase library sites" (Ill. Rev. Stat. 1977, ch. 81, par. 46 *et seq.*) allows township libraries to borrow for the purposes set forth in its title, but only if approved by referendum. Thus none of the statutes allowing borrowing by townships would fit the requirements set forth above.

Turning to fire protection districts, the only authority for them to borrow money is in sections 12 and 13 of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1977, ch. 127½, pars. 32, 33). The latter section requires a "direct annual tax" sufficient to retire the bonds within 20 years.

Similarly, as to library districts, sections 5-2 and 5-3 of The Illinois Public Library District Act (Ill. Rev. Stat. 1977, ch. 81, pars. 1005-2, 1005-3) allows issuance of bonds, but would require voter approval and a tax to pay off the bonds.

For the reasons set forth above, I conclude that "interim financing", as I understand that term to be used in the Farmers Home Administration regulations, is legally available for home rule municipalities and home rule counties, is not legally available for townships, fire protection districts, or library districts, and is not clearly legally available for non-home rule municipalities or non-home rule counties.

(No. S-1393—September 25, 1978)

REVENUE: *Application of Extended Redemption Period Provided By Public Act 79-1455.* Extension of the period of redemption provided by Public Act 75-1455 is not limited to prospective application even though the General Assembly did not specifically make it a retrospective provision.
STATUTES CONSTRUED: Illinois Revised Statutes 1977, chapter 120, paragraph 734.

Hon. John E. Payne, State's Attorney, Lee County, Dixon, Illinois.

I have your letter relating to the application of section 253 of the Revenue Act of 1939. (Ill. Rev. Stat. 1977, ch. 120, par. 734.) You inquire whether prospective or retrospective application should be given to the portion of Public Act 79-1455 effective September 30, 1976, which amended section 253 to give an owner who occupies, as his principal place of residence, improved real estate on which at least one but not more than four dwelling units have been constructed, an additional six months in which to redeem from a tax sale.

It is my opinion that the extension of the period of redemption provided by Public Act 79-1455 is not limited to prospective application even though the General Assembly did not specifically make it a retrospective provision. As a general rule, a statute or amendment to a statute will not be construed to apply retrospectively absent a showing of legislative intention that it be so applied. (*Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181, 184; *Golden* v. *Holaday* (1978), 59 Ill. App. 3d 866, 870; *People ex rel. Saam* v. *Village of Green Oaks* (1965), 55 Ill. App. 2d 51, 54.) Whether an amendment such as the one in question may be applied retrospectively depends upon whether it is of a substantive nature or of a remedial or procedural nature. (*Dworak* v. *Temple* (1959), 17 Ill. 2d 181, 187.) If the amendment is substantive it must be applied prospectively, but if it is remedial or procedural, it may be applied retrospectively. (*Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181, 184; *Dworak* v. *Temple* (1959), 17 Ill. 2d 181, 187; *Orlicki* v. *McCarthy* (1954), 4 Ill. 2d 342, 347.) An amendment, however, will not be given retrospective application if to do so would impair a vested property right. *Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181, 187.

The redemption provision of the Revenue Act of 1939 is remedial. (*In re Argyle-Lake Shore Building Corp.* (7th Cir. 1935) 78 F. 2d 491, 494.) For this reason the provision can be construed to operate retrospectively in the absence of a showing that it impairs a vested property right.

A certificate of purchase issued pursuant to section 248 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 729) gives one a vested property right inchoate and subject to redemption. (*Smith* v. *D.R.G., Inc.* (1975), 30 Ill. App. 3d 162, 169.) A certificate of purchase is not evidence of a vested right in real property. (*Wells* v. *Glos* (1917), 277 Ill. 516, 518 to 519.) The rights of tax certificate holders, in relation to property still redeemable on the effective date of Public Act 79-1455, cannot be said to have been impaired by extension of the redemption period because such rights remained inchoate on that date. Therefore, it is proper to conclude that the redemption period extension applies retrospectively in regard to property sold prior to the effective date of the Act and still redeemable on that date. It would not, however, be applied to extend redemption periods to make property which was no longer redeemable on the effective date subject to redemption.

(No. S-1394—October 5, 1978)

JUDICIAL SYSTEM: *Mailing Fee—Small Claims Cases.* Section 27.1(o)(2) of "AN ACT to revise the law in relation to clerks of courts" was not intended to impose a fee in addition to the mailing fee imposed by Supreme Court Rule 284 for the serving of process via certified mail in small claims cases.
STATUTES CONSTRUED: Illinois Revised Statutes 1977, chapter 25, paragraph 27.1(o)(2); chapter 110, paragraphs 2, 4; chapter 110A, paragraph 284.

Hon. Stephen L. Spomer, State's Attorney, Massac County, Metropolis, Illinois.

I have your letter wherein you state:

"

* * *

In a small claims case not in excess of $1,000.00 some of the Circuit Clerks in the First Judicial Circuit are charging fees pursuant to Statute and Supreme Court Rule 284 as follows: Filing Fee $10.00, Library Fee $1.00 and Mailing Fee when mailing is requested in lieu of personal service $2.25. The total to that point is $13.25.

In some other counties of the circuit the clerks are making like charges *plus* an additional charge of $2.00 pursuant to section 27.1(o)(2) of 'AN ACT to revise the law in relation to clerks of courts'. (Ill. Rev. Stat. 1977, ch. 25, par. 27.1(o)(2).) In this instance the total costs to a like point is $15.25.

* * *

"

You ask for my opinion as to which procedure is correct.

In 1963 the General Assembly amended the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, par. 1 *et seq.*) to authorize the Supreme Court to establish rules for the creation of simplified procedures for small claims. This was part of a movement, which began in other parts of the country to

ventilated. If such workings are sealed, the sealing shall be done in a substantial manner with incombustible material; however, some other type of material may be used *provided prior approval has been obtained from the Mining Board.* * * *" (Emphasis added.)

(*See*, section 16.06 and section 19.15 (Ill. Rev. Stat. 1977, ch. 96½, pars. 1606, 1915), which are representative of sections in which the power to authorize exceptions to the statutory requirements is given to the State mining inspector. *See also*, sections 19.03, 19.15, 21.13 and 23.04 (Ill. Rev. Stat. 1977, ch. 96½, pars. 1903, 1915, 2113, 2304), in which the State mining inspector or the Mining Board is given broad authority to allow a safety requirement to be altered or adapted to fit the circumstances.) It thus appears that the Board has the power to exempt a coal company from a requirement of the Coal Mining Act only if the section in which the requirement appears specifically grants the Board the authority to do so.

This conclusion has two bases of support in addition to the language of the Act. The first is the broad grant of power given to the Board by section 2.12 (Ill. Rev. Stat. 1977, ch. 96½, par. 312). This section allows the Board to:

"* * * promulgate rules and regulations in connection with methods of coal mining affecting the health and safety of persons employed in the coal mines. The rules and regulations shall be promulgated in accordance with the following procedure and standards: * * *"

As the section makes clear, the authority to promulgate regulations extends over the scope of the entire Act and is not restricted to making rules about only certain sections of the Act. In contrast to this, there is no similar provision relating to variances. The second basis for my conclusion is that other Acts do give the agencies responsible for their administration broad authority to issue variances to all the requirements of those Acts (*e.g.*, Illinois Environmental Protection Act, Ill. Rev. Stat. 1977, ch. 111½, par. 1035). These two reasons together create an inference that the legislature did not intend to give the Board the extensive power it has given other administrators.

In connection with the Board's power to issue rules and regulations, it should be noted that the Board has no power to authorize the replacement of a stairway by an elevator by means of a rule or a regulation. The law is clear that even though administrators have broad discretionary powers in promulgating rules, they may not change or waive express provisions of the governing statutes. (*Gapers Inc.* v. *Dep't of Revenue* (1973), 13 Ill. App. 3d 199; *Ruby Chevrolet Inc.* v. *Dep't of Revenue* (1955), 61 Ill. App. 2d 147.) Thus, since section 19.06 specifically requires the presence of a stairway, the Board could not make a rule authorizing an escapement shaft without a stairway, even if the alternate type of escapeway were just as safe.

In the materials you submitted with your request for my opinion, you made reference to the Federal Mine Safety and Health Act (30

U.S.C.A. §801) and to the regulations issued thereunder, specifically 30 C.F.R. §75.1704-1(b). The provisions of this section, which require that:

"Each escape shaft which is more than 20 feet deep shall include elevators, hoists, cranes, or other such equipment, which shall be equipped with cages and buckets. When such facilities are not automatically operated, an attendant shall be on duty during any coal-producing or maintenance shift. An 'attendant' as used in this subsection means a person located on the surface in a position where it is possible to hear or see a signal calling for the use of such facilities and who is readily available to operate such facilities or to readily obtain another person to operate such facilities."

make it necessary to determine whether the Coal Mining Act is pre-empted by the Federal Mining Act. Traditionally, a determination of pre-emption is based on an analysis of three factors: (1) whether there is a need for national uniformity; (2) whether the State law directly conflicts with the Federal law; and (3) whether the Federal regulatory scheme is so pervasive as to indicate a congressional intent to pre-empt the State statute. Under such a test, the Coal Mining Act might well have been found to have been pre-empted: although there is no particular need for national uniformity and State law is not so inimical to Federal regulation that compliance with the one would render observance of the other impossible, the comprehensiveness of the Federal standards might well lead to an inference of an intent to pre-empt. Such an outcome is unlikely today, however, for two reasons. The first is the fact that the Coal Mining Act regulates in the area of health and safety. This is an area in which Federal courts have always deferred to State laws. (*Huron Portland Cement Co.* v. *Detroit* (1960), 362 U.S. 440.) The second is that in recent cases, the court has stated that congressional intent to pre-empt a State law must be "clear and manifest". (*Goldstein* v. *California* (1973), 412 U.S. 546; *New York State Department of Social Services* v. *Dublino* (1973), 413 U.S. 405.) Since section 801(g) clearly refers to Federal cooperation with State efforts to foster safety, it is apparent that no such intent existed. Since there was no such intent and since State law and Federal regulation can both be complied with, there is no Federal pre-emption.

It is therefore my opinion that the State requirement that a stairway be installed is valid and the Board lacked the authority to issue a variance to that requirement.

(No. S-1416—April 11, 1979)

PUBLIC HEALTH: *Authority of a County Board of Health To Mortgage Property To Which It Has Title.* A county board of health may not mortgage property to which it already holds title in order to finance the construction of a building on the property. A county board of health need not obtain permission from the county board prior to exercising its powers under section 15.1.

STATUTES CONSTRUED: Illinois Revised Statutes 1977, chapter 111½, paragraph 20c14.1.

Hon. Stephen Landuyt, State's Attorney, Henderson County, Oquawka, Illinois.

I have your letter wherein you inquire whether the Henderson County Board of Health may mortgage a piece of property to which it already has title in order to finance the construction of a building on the property. You also inquire whether a county board of health must obtain permission from the county board prior to exercising its powers to lease or acquire property under section 15.1 of "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments" (Ill. Rev. Stat. 1977, ch. 111½, par. 20c14.1). For the reasons hereinafter stated, it is my opinion that a county board of health may not mortgage property to which it already holds title in order to finance the construction of a building on the property. It is also my opinion that a county board of health need not obtain permission from the county board prior to exercising its powers under section 15.1.

Section 15.1 of the Act provides in pertinent part as follows:

"The board of health of each county or multiple-county health department is authorized to lease or to acquire by purchase, construction, lease-purchase agreement or otherwise and take title in its name and to give a purchase money mortgage, maintain, repair, remodel or improve such real estate as may be reasonably necessary for the housing and proper functioning of such health department. Money in the County Health Fund may be used for such purposes."

Although the above provision authorizes a board of health to "take title in its name and to give a purchase money mortgage", neither section 15.1 nor section 14 of the Act (Ill. Rev. Stat. 1977, ch. 111½, par. 20c13) authorizes a board of health to mortgage property which it already owns in order to borrow funds for the construction of a building to house the health department.

A board of health, like the county board, has only those powers expressly granted by statute or necessarily implied therefrom. (See *People ex rel. Village of Hinsdale v. Board of Supervisors of DuPage County* (1941), 309 Ill. App. 609, 615.) Therefore, because the only mortgage which a board of health is authorized to enter into is a purchase money mortgage, and because the mortgage which you have described is not in the nature of a purchase money mortgage, the board of health has no authority to enter into the mortgage contemplated.

I note that bonds may be issued pursuant to procedures set forth in sections 20 through 23 of the Act (Ill. Rev. Stat. 1977, ch. 111½, pars. 20c19 through 20c22) for the provision of buildings for or permanent improvement of community health facilities. Such procedures provide a method for financing projects such as the one in question.

Section 15.1 is a fairly broad grant of authority to a board of health. Neither that section nor any other provision requires a board of health to obtain county board approval prior to leasing or acquiring property for the purpose of housing the county health department.

The finances of a county board of health are under the general control of the county board pursuant to the provisions of section 11 of the Act (Ill. Rev. Stat. 1977, ch. 111½, par. 20c10), which gives the county board authority to levy a tax for the county health fund and to approve the budget of the board of health. Under section 11, the county board would, of course, be able to review a budgetary item of the board of health relating to the leasing or acquisition of property with monies from the county health fund. Such power does not, however, give the county board the power to approve or disapprove an action taken by the board of health pursuant to the authority granted to it in section 15.1. See 1950 Ill. Att'y Gen. Op. 61.

(No. S-1417—April 11, 1979)

LICENSED OCCUPATIONS: *Persons Required to Obtain a Certificate of Registration As a Private Detective.* Persons who check merchants' doors and other security systems during the late night and early morning hours are required to obtain a certificate of registration as a private detective.

STATUTES CONSTRUED: Illinois Revised Statutes 1977, chapter 111, paragraphs 2601, 2602, 2603.

Hon. Terrence J. Hopkins, State's Attorney, Franklin County, Benton, Illinois.

I have your letter wherein you state that there are persons who are employed within your county who perform the functions of checking merchants' doors and other security systems during the late night and early morning hours. You have indicated that they make sure the doors are locked and the lights are on. You further state that they perform a very valid and successful crime prevention function. You have asked whether these persons are required to be licensed with the Department of Registration and Education. It is my opinion that they are.

Your question necessarily requires an interpretation of certain provisions of "AN ACT to provide for licensing and regulating detectives and detective agencies, and to safeguard the interest of the public" (Ill. Rev. Stat. 1977, ch. 111, pars. 2601 through 2639). So far as relevant, section 1 of this Act (Ill. Rev. Stat. 1977, ch. 111, par. 2601) provides:

"The private detective business, as used in this Act, shall consist of the business of making for hire or reward, an investigation or investigations by a person or persons for the purpose of obtaining information with reference to any of the following matters: * * * . The business of furnishing for hire or reward guard or guards, watchman or watchmen, patrolman or patrolmen, or other persons to protect persons or property both real and personal or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares and merchandise, money, bonds, stocks, choses in action, notes or other valuable documents

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706

November 7, 1990

I - 90-050

COUNTIES:
Lease-Purchase of Correctional
Facility for Rent to Other
Governmental Entities

Honorable Barry L. Vaughan
State's Attorney, Wayne County
Post Office Box 641
Fairfield, Illinois 62837

Dear Mr. Vaughan:

I have your letter of August 24, 1990, wherein you inquire whether Wayne County has the authority to enter into a trust indenture with a corporate trustee and another corporation ("the lessor"), under which the lessor agrees to issue a bond to finance the construction of a 336 bed correctional facility, and the county agrees to lease, operate and maintain the entire facility on a 20-year, lease-to-own basis and to enter into intergovernmental agreements to rent out space in the facility over and above the 24 to 48 beds required for the needs of the county. Due to your need for an expedited response, I will, at this time, comment informally upon the issues you have raised.

It is suggested that article VII, section 10 of the Illinois Constitution and section 5-1083 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1083) provide authority for the county to undertake this transaction. Article VII, section 10 provides:

> "(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.
>
> * * * "

(Emphasis added.)

Section 5-1083 of the Counties Code provides:

> "Purchase or lease of property. A county board may purchase or lease any real estate or personal property for public purposes under contracts providing for payment in installments over a period of time of not more than 20 years in the case of real estate * * *
>
> * * * "

In opinion No. S-1161, issued September 27, 1976 (1976 Ill. Att'y Gen. Op. 303), Attorney General Scott advised that the power conferred by the broad language of the second sentence of article VII, section 10(a) is limited by section 7 of article VII of the Constitution, which provides that counties which are not home rule units "shall have only powers granted to them by law", together with other specified powers not relevant here. He stated, at p. 304:

> " * * *
>
> * * * Accordingly, a county cannot contract with an individual or private association or corporation to do something which the county has no authority to undertake. * * *
>
> * * * "

In opinion No. S-1183, issued November 22, 1976 (1976 Ill. Att'y Gen. Op. 339), Attorney General Scott said of the second sentence of article VII, section 10(a):

> " * * *
>
> * * * This provision does not grant authority to counties to undertake functions, programs, or activities without other authority. It only provides a method of performing such functions, programs or activities authorized by other provisions of law. It is therefore necessary to find the statutory authority for the county to undertake the functions contemplated. * * *
>
> * * * "
>
> (1976 Ill. Att'y Gen. Op. 339, 340.)

He emphasized that a county is authorized to engage in certain types of activities "only to the extent authorized by law". 1976 Ill. Att'y Gen. Op. 339, 340.

Section 5-1083 of the Counties Code permits a county to purchase or lease real estate for public purposes under installment contracts. It should not be construed, however, as a general grant of substantive authority for the county to acquire property for any public purpose, but only as authorization to use installment contracts or long term leases to acquire property when otherwise authorized by statute to do so. In other words, section 5-1083 of the Counties Code provides a method for carrying out a power which has otherwise been specifically granted by statute.

According to the information which you have provided, the county intends to rent the vast majority of the projected facility's prison space to other units of local government, the Illinois Department of Corrections, other States and political subdivisions thereof, and the United States government, on a per diem basis. Although the county itself may need additional space, the greater part of the facility is not intended to serve as a county jail. The facility will be operated, maintained and, at the end of the 20 year lease, owned by the county. The lessor is to issue a bond and arrange for the issuance and placement of certificates of participation. The lease will be assigned to the trustee upon issuance of the certificates. The county's lease payments will apparently be divided into two portions. The county will pay for that part of the project that will serve as the county jail for Wayne County by annual appropriations in the normal manner. The

county expects that user fees will cover the lease payments and the expenses of operation and maintenance of the rest of the facility. You have indicated that lease payments for the section rented out will range from zero to a fixed amount, depending upon the number spaces rented. The county has entered into no agreements with any prospective user and does not expect to do so before entering into the trust indenture.

In order to determine whether the county is authorized to acquire prison space for the purpose of housing prisoners of other governmental entities on a per diem basis, several pertinent statutes must be examined.

Section 5-1005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005) authorizes a county to lease real estate which is owned by the county, and to purchase and hold real estate necessary for the use of the county. It appears that contracts for housing prisoners of other governmental entities would not, however, constitute leases of county property, and the county's lease-purchase of the entire correctional facility would not constitute a purchase of real estate necessary for the use of the county. The scope of the project goes well beyond the power of the county board to incur an indebtedness for the construction of a county jail (Ill. Rev. Stat. 1989, ch. 34, par. 6-3004.1), or the duty of the county board to erect or otherwise provide and maintain a suitable jail (Ill. Rev. Stat. 1989, ch. 34, par. 5-1106).

Section 1 of "AN ACT in relation to prisoners and jails * * *" (Ill. Rev. Stat. 1989, ch. 75, par. 101) provides:

> "There shall be kept and maintained in good and sufficient condition and repair, one or more jail facilities for the use of each county within this State. However, this requirement may be satisfied by a single jail facility jointly maintained and used by 2 or more counties. * * *"

The facility proposed by the county, however, would be maintained solely by Wayne County and would not necessarily be used to house prisoners from another county. The purpose of this provision was to allow two or more counties to combine their facilities and resources for a jointly-maintained jail. (Remarks of Senator Knuppel, May 6, 1975, Senate Debate on House Bill 59, at 32-33.) No other counties are involved in the agreement at hand.

Pursuant to its power to establish new correctional facilities and institutions, the Illinois Department of Corrections may, with the approval of the Governor, authorize

the Illinois Department of Central Management Services to enter into an agreement with a county to construct, remodel or convert a structure to be used as a correctional facility or institution, and may authorize the Department of Central Management Services to receive bids from counties for the construction, remodeling or conversion of a structure to be leased to the Department of Corrections as a correctional institution or facility. (Ill. Rev. Stat. 1989, ch. 38, par. 1003-2-2(c); ch. 127, pars. 63b13.2(d) and (e).) These provisions authorize the county to construct a correctional facility pursuant to an agreement with the Department of Central Management Services, but the county has entered into no such agreement.

None of the foregoing statutory provisions authorizes the county to purchase or construct a correctional facility for the purpose of housing the prisoners of other governmental entities, in the absence of agreements with those entities. It appears, therefore, that the requisite substantive statutory authority to support the proposed contract is lacking. In Connelly v. Clark County (1974), 16 Ill. App. 3d 947, 307 N.E. 2d 128, the court considered the authority of a county that owned a gravel pit to sell gravel in excess of its own needs to other governmental units in the county. Although the county had statutory authority to operate the gravel pit, and to sell gravel from the pit to other units of local government when such units enter into a joint or cooperative agreement or venture, the court held that mere sales of gravel to governmental units were not authorized. The court stated:

" * * *

* * * Dillon's Rule of strictly construing legislative grants of authority to local governmental units has been abrogated by section 10 of Article VII of the 1970 Constitution when local governments voluntarily cooperate to share services on a partnership or joint venture basis. Nevertheless, we find no such joint venture here. The townships are under no contractual obligation to purchase any gravel from Clark County. They have not combined with the county to perform or share specific services or functions. There is no joint funding and administration of the gravel pit operation. There is no agreement for the joint operation of the facility. There is no apportioning of the costs of any cooperative venture. Isolated purchases,

> from time to time, cannot be said to fall within the purview of section 10, Article VII of the 1970 Constitution or chapter 121, section 1-102.
>
> * * *

Thus, even if the county had authority to purchase or construct the entire facility, there would still be a significant question as to its authority to sell its services on a per diem basis. Connelly v. County of Clark indicates that the existence of proper intergovernmental agreements would be a necessary prerequisite to the operation of such a facility. Otherwise, the services would appear to be analogous to "isolated purchases" which cannot support a joint venture under the Constitution.

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

Very truly yours,

[redacted]

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Division

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

March 1, 1999

FILE NO. 99-001

COUNTIES:
Authority to Borrow Money

The Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether a non-home-rule county has the authority to borrow money from a financial institution and execute a multi-year installment note to secure the repayment of the loan. For the reasons hereinafter stated, it is my opinion that non-home-rule counties do not have the authority to borrow money on multi-year installment notes, in the absence of specific statutory authorization so providing.

It is axiomatic that a non-home-rule county has only those powers that are expressly granted to it by statute or by the constitution (Ill. Const. 1970, art. VII, sec. 7), together with those powers that may be implied therefrom as being neces-

sary to carry out those express powers. (See Redmond v. Novak (1981), 86 Ill. 2d 374, 382.) Although several statutory provisions authorize counties to borrow money for particular purposes, generally in conjunction with the issuance of bonds payable from a particular revenue stream or a specific tax, no statute specifically authorizes a county to borrow money from a bank or other financial institution subject to repayment in installments.

It has long been the rule that the power to borrow money is not an incident to local political government, and a county cannot borrow money in the absence of express authority of law to do so. (Strodtman v. County of Menard (1894), 55 Ill. App. 120, 125.) The power to borrow money is not implicit in statutes generally authorizing county authorities to manage their corporate affairs; such provisions only give the county board the power to manage and control county funds and transact county business according to law. Strodtman v. County of Menard, 55 Ill. App. at 126.

I note that article VII, section 7 of the Constitution refers to the power of non-home-rule counties and municipalities to incur debt:

> "Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers * * * to incur debt except as limited by law and except that debt payable from ad valorem

> property tax receipts shall mature within 40 years from the time it is incurred; * * *" (Emphasis added.)

This language could be interpreted as granting to a county the power to borrow money except to the extent prohibited by law.

In opinion No. S-1392, issued September 25, 1978 (1978 Ill. Att'y Gen. Op. 170), Attorney General Scott considered this constitutional provision in addressing whether non-home-rule units might obtain interim financing for Farmers Home Administration projects. Attorney General Scott stated:

> " * * *
>
> It can be argued that this provision is an affirmative grant of authority to non-home rule units to borrow money except as explicitly limited by law. However, no reported court decision has addressed this question, and the debates of the 1970 Constitutional Convention shed little light on the exact meaning of the provision. (See, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3218 (remarks of Delegate Tomei); 5 Proceedings 4191 (remarks of Delegates Stahl and Parkhurst).) Although the General Assembly has passed no Act stating in effect that non-home rule municipalities may incur debt only as authorized by statute, it has apparently intended that rule to apply, for in the period since the 1970 Constitution took effect it has amended or added to many of the sections cited above that authorize specific kinds of borrowing. Given this history, it is not clear whether the courts would interpret article VII, section 7 to allow all borrowing not explicitly limited by statute. Because of that uncertainty, non-home rule municipalities would not, as a

practical matter, be able to find lenders for interim financing.

* * * "

In the 20 years since opinion No. S-1392 was issued, the General Assembly has not enacted a general grant of authority to counties to borrow funds, and no court has interpreted article VII, section 7 as allowing borrowing which is not explicitly authorized by statute. Consequently, I do not believe that article VII, section 7 of the Constitution can be construed as an independent grant of authority to incur debt.

Moreover, as you have noted, certain statutory provisions appear to prohibit a county's execution of multi-year installment notes in most cases. For example, section 3 of the Revenue Anticipation Act (50 ILCS 425/3 (West 1996)) provides that any notes issued thereunder shall be due not more than 12 months from the date of issue. Further, section 6-1005 of the Counties Code (55 ILCS 5/6-1005 (West 1996)) provides that county officers cannot, on behalf of the county, make any contract which adds to county expenditures in any year above the amount provided for in the annual budget for that fiscal year; and that no contract shall be entered into or obligation incurred unless pursuant to an appropriation. Typically, counties cannot make appropriations on a multi-year basis.

Based upon these principles, it is my opinion that a county does not have the authority to borrow money from a financial institution upon execution of a multi-year installment note unless the General Assembly has specifically authorized such borrowing by statute.

Sincerely,

[redacted]

JAMES E. RYAN
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

June 17, 2002

I - 02-036

COUNTIES:
Collection of County Shelter
Care and Detention Home Tax;
Authority to Mortgage Property

The Honorable William K. Richardson
State's Attorney, Franklin County
202 West Main Street
Benton, Illinois 62812

Dear Mr. Richardson:

I have your letter wherein you inquire: (1) whether a non-home-rule county, in which a referendum to adopt the provisions of the County Shelter Care and Detention Home Act (55 ILCS 75/1 et seq. (West 2000)) has been passed, is thereby required to levy and collect a tax to pay for the costs of the establishment and maintenance of a county juvenile detention facility; and (2) whether a non-home-rule county may mortgage a parcel of real property to which it holds title in order to finance the construction of the county's juvenile detention facility. In accordance with your request, I will respond informally to the questions you have raised.

It is well established that non-home-rule counties possess only those powers that are expressly granted to them by the constitution or by statute, together with those powers that are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) It appears that the County Shelter Care and Detention Home Act is the exclusive grant of authority to counties to maintain a county juvenile detention facility.

Pursuant to section 1 of the Act (55 ILCS 75/1 (West 2000)), a county that proposes to construct and to maintain a detention home for the care and custody of delinquent minors is required to obtain referendum approval. In this regard, you have indicated that at the general election held on November 3, 1998, the following proposition was approved by the voters of Franklin County pursuant to the provisions of section 6 of the County Shelter Care and Detention Home Act (55 ILCS 75/6 (West 2000)):

" * * *

For adoption of the act to authorize the county authorities to establish and maintain a detention home for delinquent minors and a shelter care home for minors who are delinquent, neglected, addicted, abused, dependent or require authoritative intervention and to levy and collect a tax not exceeding .10 per cent of the value, as equalized or assessed by the Department of Revenue, to pay the cost of its establishment and maintenance.

Yes	
No	

* * * "

An order declaring that the County Shelter Care and Detention Home Act was adopted and that the Act is in force in Franklin County was filed in the Franklin County Circuit Clerk's office on November 9, 1998.

Subsequent to the entry of this order, the county board of Franklin County has been investigating the feasability of constructing a juvenile detention facility. Specifically, you have noted that the county board has applied for a grant from the Illinois Criminal Justice Information Authority, has obtained and gained approval of architectural drawings, has accepted bids for the construction of the juvenile detention facility and has explored potential financing arrangements. To date, however, the county board has not levied or collected the tax referred to in the proposition under which the county adopted the provisions of the County Shelter Care and Detention Home Act. You have inquired, firstly, whether the levy and collection of the tax referred to in section 6 of the Act and included in the proposition adopting the Act is mandatory.

The origins of section 6 of the County Shelter Care and Detention Home Act can be traced to section 6 of "AN ACT to authorize county authorities to establish and maintain a detention home for the temporary care and custody of dependent, delinquent or truant children, and to levy and collect a tax to pay the cost of establishment and maintenance [hereinafter referred to as the 'County Detention Home Act']". (Laws 1907-08, p. 59.) In People ex rel. Flick v. Chicago, Burlington & Quincy R.R. Co. (1920), 291 Ill. 502, the Illinois Supreme Court was asked to determine, inter alia, whether the adoption of the County Detention Home Act by the voters of LaSalle County, in accordance with section 6 of that Act, was an authorization by a vote of the people for the levy of a tax in excess of the county limit, as required by article 9, section 8 of the Illinois Constitution of 1870. In reaching its conclusion that the constitutional requirement had been satisfied, the court discussed the purposes of sections 5 and 6 of the County Detention Home Act (Hurd's Stat. 1917, p. 275, 277), stating:

" * * *

> It will be observed that section 5 in express terms provides for the levy of a tax, aside from and in addition to the tax allowed for county purposes by the constitution, when the people authorize such tax by a vote adopting the act, as provided by section 6. * * * Therefore, if section 6 provides a means whereby the voters, by adopting the act, may be fairly said to have authorized the tax, then the requirements of section 8 of article 9 of the constitution have been met, and the county authorities are by the act then authorized to levy such tax to the extent of one mill, without regard to whether or not they have levied taxes to the extent of seventy-five cents on the $100 valuation for general county purposes. Section 6 * * * expressly provides that when the act is adopted 'the tax provided for in the act shall thereafter be annually levied and collected in such county for the purposes specified in this act, until such time as the legal voters of the county shall abandon this act in manner provided in section 7 of this act.'

* * *

* * * It seems clear that the legislature, in requiring adoption of the act by vote before it should become effective, intended that such vote should be the authorization of the levy of this particular tax, as required by the constitution, as the legislature could, had it seen fit, have granted power to the county authorities to establish a detention home and maintain the same within the general taxes for county purposes, as limited by the constitution, without a vote of the people. * * * Here the vote was to adopt the act. If any part of the act was adopted, all parts which the legislature had power to enact were adopted and all things therein provided for were authorized. * * * Any voter voting on the proposition voted for or against the adoption of the act and thereby voted for or against the adoption of all sections of the act, including section 5, which provides the taxing power in question. * * *

* * * Whether the full mill tax shall be levied is left to the discretion of the county board, and whether this tax shall be in excess of the constitutional limitation will depend upon whether the tax for other county purposes amounts to seventy-five cents on the $100 valuation. The mention of the tax in the ballot therefore served only to give additional notice to the voter that this act, when adopted, would grant this additional power to levy and collect a tax. * * *

* * *

(Emphasis added.) People ex rel. Flick v. Chicago, Burlington & Quincy R.R. Co. (1920), 291 Ill. at 506-510.

It appears, therefore, that under sections 5 and 6 of the County Detention Home Act, it was within the discretion of the county board to determine the amount of the tax to be levied

for the support of a county detention home, up to a maximum of .01%. The language of sections 5 and 6 of the County Detention Home Act discussed in People ex rel. Flick v. Chicago, Burlington & Quincy R.R. Co. is substantially similar to that of current sections 5 and 6 of the County Shelter Care and Detention Home Act, and should be given a similar interpretation. Therefore, it appears that it is within the county board's discretion to determine whether to levy the full tax authorized by the referendum, a lesser amount, or no tax at all, if the board determines that taxpayer funding is not currently necessary.

Secondly, you have inquired whether a non-home-rule county may mortgage a parcel of property to which it already has title in order to finance the construction of the county's juvenile detention facility. Neither the provisions of the Counties Code nor those of the County Shelter Care and Detention Home Act authorize a county to mortgage property to secure such a loan. It has long been the rule in this State that a unit of local government may not legally execute a mortgage without express statutory authority to do so. (1933 Ill. Att'y Gen. Op. 758; 1979 Ill. Att'y Gen. Op. 31; Ill. Att'y Gen. Op. No. 97-010, issued May 6, 1997.) Counties have not been granted the express authority to mortgage their property. Therefore, although it appears that a county may enter into an agreement to pay for a juvenile detention facility in installments (see 55 ILCS 5/5-1083 (West 2000)), it does not appear that it may give a mortgage as security for the repayment of the loan.

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

Sincerely,

[redacted]

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Bureau

MJL:LP:ab