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SPRINGFIELD

April 17, 1974

FILE NO. NP-738

COUNTIES:
Power to license or
franchise CATV in
unincorporated areas
of the county

Honorable Jack Hoogasian
State's Attorney
Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your letter of recent date wherein you state:

> "Does Lake County have the power to license or franchise community antenna television systems in the unincorporated areas within the county? Also, would townships have that power?"

As you are aware, a county can exercise only such powers as are expressly granted by statute, or such as arise by necessary implication, or are indispensable to carry into

NP 738

effect the object and purpose of their creation. Marsh v. People, 226 Ill. 464; LaSalle County v. Milligan, 143 Ill. 321.

Presently, counties have been given no express statutory authority to license or franchise community antenna television systems (CATV). It should be noted that municipal corporations have been given the express power to license, franchise and tax community antenna television systems under section 11-42-11 of the Illinois Municipal Code. Ill. Rev. Stat. 1973, ch. 24, par. 11-42-11.

The issue, therefore, presented is whether counties have the power arising by implication to license or franchise CATV. In Illinois Broadcasting Co. v. City of Decatur, 96 Ill. App. 2d 454, the city of Decatur had passed an ordinance licensing and franchising community antenna television systems within its corporate limits prior to the passage of section 11-42-11 of the Illinois Municipal Code. The court held that, nevertheless, the municipality had implied power in the first instance to enact the franchise ordinance. Expressly avoiding a discussion of whether section 11-42-11 of the Municipal Code would validate an existing ordinance otherwise invalid, the court stated on page 458:

> " * * * The power finds its source in the statutory grant permitting municipalities to regulate the use to be made of their streets, alleys and public ways—'over, above, beneath and across'. A parallel power with somewhat reverse English grants to cities the right to prevent obstructions. Specifically, §11-80-2 of the Illinois Municipal Code (Chap. 24, Ill. Rev. Stat. 1965) accords to cities the right to regulate the use of its streets and other municipal property, and §11-80-3 says that the 'corporate authorities of each municipality may prevent and remove encroachments or obstructions upon the streets and other municipal property'. Curbs, gutters and crosswalks are provided for in §11-80-11, and the space over the streets and public places in §11-80-8. These are the sources from which Decatur derives the power to enact this ordinance."

For our purposes, the question to be determined is whether, by analogy, a county may franchise CATV systems pursuant to, and implied from, its power to regulate its own roads and highways.

The county highway system is defined, and the highways included therein are enumerated, in section 2-102 of the Illinois Highway Code. (Ill. Rev. Stat. 1973, ch. 121, par. 2-102.) The powers and duties of the county board with regard to its control over county highways are enumerated in sections 5-101.1 thru 5-101.11 of the Illinois Highway Code. (Ill. Rev. Stat. 1973, ch. 121, pars. 5-101.1 to 5-101.11 inclusive.) The powers and duties include, but are not limited to, general

supervision of all county, township and district highways, appointment of a county superintendent of highways and erection and maintenance of traffic control devices and signs. Under section 5-101.9, the county is granted power to exercise any other power, and perform any other duty prescribed in the Highway Code. Thus, as the highway authority, the county may order removal of highway obstructions on county highways under section 9-117 of the Highway Code. Most notably, section 9-113, dealing with the use of highways by public utilities or private corporations, states in part:

> "No ditches, drains, track, rails, poles, wires, pipeline or other equipment of any public utility company, municipal corporation or other public or private corporation or association or person shall be located, placed, or constructed upon or along any highway, or any township or district road, other than a highway or road within a municipality, without first obtaining the written consent of appropriate highway authority as hereinafter provided for in this section.
>
> Upon receipt of a petition therefor, consent to so use a highway may be granted subject to such terms and conditions not inconsistent with this Code as the highway authority deems for the best interest of the public. * * *
>
> Such consent shall be granted by * * * the county board in the case of a county highway; * * * * " (Emphasis added.)

The issue thus squarely presented is whether, from

the above cited express statutory powers, the power to license and franchise CATV systems is necessarily implied.

It is my opinion that no such implied powers are derived from such statutory authority.

First, it is of crucial importance to note that municipalities are authorized by statute to exercise vastly greater control over their streets and alleys. Sections 11-80-2 thru 11-80-23 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, pars. 11-80-2 thru 11-80-23 inclusive) grant to municipalities the power to govern not only maintenance of streets, but the use of space over, on, and under the streets, street advertising, carrying banners and placards, use for utility equipment, etc. No such express and extensive authority is granted to counties in the control of roads and highways, other than that they are to have "general supervision" of the county highways subject to the provisions of section 4-101 of the Code (dealing with general powers of State Department of Transportation.)

Second, in regard to the specific statutory grant of authority to regulate use of highways by public utilities or private corporations (section 9-113 of the Illinois Highway

Code, text of which is cited above), the extent of the power thus granted depends on the meaning of the word "consent".

The licensing power of a state may be delegated to its political subdivisions or agencies. Where home rule units are involved, the power to license is specifically granted under section 6 of article VII of the Illinois Constitution of 1970. However, with regard to non-home rule political subdivisions the power to license is not inherent, but is rather wholly dependent upon, and limited by, the statute delegating the power. (53 C.J.S., Licensing, §9.) Statutes delegating licensing requirements must be strictly construed. Village of Kincaid v. Vecchi, 332 Ill. 586.

It is my considered opinion that the word "consent" as used in the above statute does not mean "license or franchise". The highway authority is given the power to consent to the use of the highway, or to refuse to consent; it may also consent to the use of the highway subject only to such conditions that the authority considers in the best interest of the public. Nowhere is the power granted to regulate the use of the highway by imposing a fee, nor is there present any grant of power to regulate the business of the user.

It is, therefore, my opinion that in the absence of

any enabling legislation, a county cannot license or franchise community antenna television systems in the unincorporated areas of the county.

With regard to your question concerning townships, since it is not your duty as State's Attorney to legally advise townships, no opinion is expressed as to whether it is within the power of townships to regulate community antenna television systems.

Very truly yours,

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

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

August 23, 1995

I - 95-028

FEES:
Authority of a County Board
to Establish a Recycling Program
Fee and to Enter into a
Franchise Agreement with a
Waste Hauler Based upon Population

Honorable John G. Prior, Jr.
State's Attorney, Henderson County
Henderson County Court House
Post Office Box 605
Oquawka, Illinois 61469

Dear Mr. Prior:

I have Assistant State's Attorney James Drozdz's letter wherein he inquired: 1) whether a county board may establish, as a part of its recycling program, a $.50 per residence per month fee, to be collected and remitted to the county by haulers pursuant to a license issued under the provisions of division 5-8 of the Counties Code (55 ILCS 5/5-8001 et seq. (West 1992)); and 2.) if such a fee is not permissible, whether the county may enter into a franchise agreement in which the franchise is determined not on the basis of territory but on a percentage of the population. Because of the nature of this inquiry, I do not believe that an official opinion of the Attorney General is necessary. I will, however, comment informally upon the questions that have been raised.

It is well established that non-home-rule counties possess only those powers which are expressly granted to them by the Constitution or by statute, together with those powers which 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.) Therefore, in order to determine whether a county may establish a

monthly garbage collection fee as part of its garbage hauling vehicle license, it is necessary to review the provisions of the Counties Code (55 ILCS 5/1-1001 et seq. (West 1992)) to ascertain the extent of the authority which has been granted to counties in this regard.

Division 5-8 of the Counties Code authorizes counties to regulate the activities associated with the disposal of garbage. Specifically, sections 5-8002 and 5-8003 of the Code (55 ILCS 5/5-8002 and 5/5-8003 (West 1992)), which authorize counties to license specified garbage hauling activities, provide, in pertinent part:

> " * * * The county board in any county is authorized to:
>
> * * *
>
> (2) license annually vehicles of any kind which are used in hauling garbage to [licensed] disposal areas except such vehicles owned or operated by any incorporated city, village or town used in hauling garbage to any garbage disposal area maintained by such city, village or town. License forms shall be furnished by the county board and shall provide for the following information: name and address of hauler; a description of the vehicle; the place where such vehicle is kept when not in use.
>
> * * * "

(Emphasis added.)

> "The county board in any county may fix the annual amounts of fees, terms and manner of issuing and revoking licenses provided for in this Division and for such purpose may, by ordinance definition, sub-classify the types of licenses authorized by this Division. The fees for licenses shall not exceed the following:
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> * * *
>
> (2) For each vehicle used in hauling garbage to a garbage disposal area, $50 per vehicle per annum." (Emphasis added.)

The primary rule of statutory construction is to ascertain and give effect to the intention of the General Assembly in enacting the statute. (People v. Hicks (1995), 164 Ill. 2d 218, 222.) In this regard, the language used in a statute is the primary source for determining the General Assembly's intent. (People v. Jameson (1994), 162 Ill. 2d 282, 288.) Where the language of a statute is clear and unambiguous, it should be given effect as written. West v. Kirkham (1992), 147 Ill. 2d 1,6.

Under the provisions of section 5-8002 of the Code, it is clear that counties are authorized to license garbage hauling vehicles which dispose of garbage at county-licensed disposal areas. Moreover, section 5-8003 authorizes a county board to establish the fee for obtaining a garbage hauling vehicle license, subject, however, to a maximum of $50 per vehicle. Nothing in the language of the two sections authorizes counties to license garbage or recyclable materials haulers generally, or to include a provision in a garbage hauling vehicle license which would require a garbage hauler to collect a monthly service charge from the residents of the county and remit to the county the proceeds thereof. Consequently, it does not appear that a county is authorized to require the collection of a $.50 per residence per month garbage or recycling service charge as a condition of receiving a garbage hauling vehicle license.

You have also inquired whether the county is authorized to enter into a franchise agreement for hauling or recycling services in which the franchise is determined on the basis of population. A review of the various provisions of the Counties Code indicates that counties may franchise certain activities, such as community antenna television systems. (55 ILCS 5/5-1095 (West 1992).) Our examination of the pertinent statutory provisions has not disclosed, however, a grant of authority which authorizes counties to franchise garbage hauling or recycling services. Consequently, in the absence of express authority therefor, it does not appear that a county may enter into a franchise agreement for the provision of garbage hauling or recycling services based upon either a geographic or a population basis.

I would note, however, that section 5-1048 of the Counties Code (55 ILCS 5/5-1048 (West 1992)) grants to counties the power to contract for garbage disposal and recycling services:

> "Contracts for garbage disposal or recycling. A county board may contract with any city, village, incorporated town, or any

> person, corporation, or other county, or any agency created by intergovernmental agreement, for a period of not less than one and not more than 30 years, in relation to the collection and final disposition or to the collection alone or final disposition alone of garbage, waste refuse, and ashes. The county board may also contract with an organization or institution organized and conducted on a not-for-profit basis for the purpose of recycling garbage and refuse. The governing body shall authorize the execution of the contract by resolution, and shall appoint a committee of no more than three of its own members to serve with committees from the other contracting parties as a joint subcommittee on garbage and refuse disposal, or collection, or collection and disposal, as the case may be. If the contract is with a non-profit entity, the governing body shall appoint a committee of not more than three of its own members to oversee fulfillment of the contract."

Under section 5-1048, it is clear that counties are authorized to enter into contracts for the collection and disposition of garbage, waste refuse and ashes and for the purpose of recycling garbage and refuse. It has long been recognized "* * * that the power to remove and dispose of garbage, refuse and other waste includes the power to create and use the necessary means to accomplish the purpose effectually." (Strub v. Village of Deerfield (1960), 19 Ill. 2d 401, 403.) Accordingly, the courts have sustained ordinances enacted as an exercise of a unit of local government's power to cause the removal or disposal of garbage, refuse and other waste, and which grant an exclusive license or a limited number of licenses to refuse haulers or scavengers. Strub v. Village of Deerfield (1960), 19 Ill. 2d at 404; City of Decatur v. Waste Hauling, Inc. (1987), 156 Ill. App. 3d 630, 632-33.

Therefore, it appears that under the provisions of section 5-1048 of the Code, counties may enter into exclusive contracts or issue limited licenses to persons, companies or units of local government engaged in the business of providing garbage hauling or recycling services. In entering into these contracts, it is foreseeable that counties could establish terms regarding price, equipment and method of pickup. (See City of

Decatur v. Waste Hauling, Inc. (1987), 156 Ill. App. 3d at 634.) Therefore, the county board may wish to consider the benefits of issuing licenses under the provisions of section 5-1048 of the Code.

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 Bureau

MJL:LP:dn

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

October 31, 2002

Jim Ryan
ATTORNEY GENERAL

I - 02-051

COUNTIES:
Provision of Emergency
Ambulance Services

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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 regarding the authority of a county to contract with a private business organization for the purpose of providing emergency ambulance service to residents of unincorporated areas of the county, as well as to residents of several of the municipalities located therein. Because of your need for an expedited response, I will comment informally upon the questions you have raised.

You have stated that the city of West Frankfort, in cooperation with Frankfort and Denning Townships, provides emergency ambulance services to their residents through the West Frankfort Fire Department and pays for this service through a tax levy. The remainder of Franklin County is provided emergency ambulance service through a privately-owned ambulance company. A group of community leaders recently met with the owner of the current service provider regarding expanding the number of ambulances servicing Franklin County. The owner of the provider has agreed to increase the number of ambulances servicing Franklin County, but only if: (1) the provider is made the exclusive county emergency ambulance service provider, excluding the city of West Frankfort; and (2) the county provides moneys to purchase the additional ambulances and makes additional payments to help defray expenses of operating the service.

Due to fiscal constraints, however, the county is not currently in a position to provide funding to the current service provider for the purchase of additional ambulances or to help defray the additional expenses of operation. Morever, you have indicated that the county board does not wish to undertake operation of an emergency ambulance service itself. Rather, the county would like to explore its options for providing emergency ambulance service through a private company. Accordingly, you have inquired, firstly, whether, under subsection 5-1053(c)(3) of the Counties Code (55 ILCS 5/5-1053(c)(3) (West 2000)), the Franklin County Board may grant an exclusive franchise to one private emergency ambulance service provider for the county.

It is well established that non-home-rule counties may exercise only those powers that have been 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.) Section 5-1053 of the Counties Code authorizes a county board:

> "* * * Under the terms and conditions hereinafter set out, * * * [to] provide emergency ambulance service to or from points within or without the county; may contract with providers of ambulance service; may combine with other units of governments for the purpose of providing ambulance service; may pay for the expenses incurred in providing for or contracting for the provision of such service from the general funds of the county; may levy a tax for the provision of such service under the provisions of Section 5-1028; and may adopt rules and regulations relating to ambulance service within its jurisdiction.
>
> (a) It is declared as a matter of public policy:
>
> (1) That, in order to preserve, protect and promote the public health, safety and general welfare, adequate and continuing

emergency ambulance service should be available to citizens of Illinois;

(2) That, insofar as it is economically feasible, emergency ambulance service may be provided by private enterprise or units of local government; and

(3) That, in the event adequate and continuing emergency ambulance services do not exist and cannot be effectively and efficiently provided by private enterprise or other units of local government, counties should be authorized to provide or cause to be provided, ambulance service as a public service.

(b) Whenever the County Board of a county which is not a home rule county desires to provide an ambulance service, it may pass, by a majority vote of those elected to the Board, an ordinance upon such subject.

(c) If the County Board passes such an ordinance the board may:

* * *

2. Contract with a private person, hospital, corporation or another governmental unit for the provision and operation of ambulance service or subsidize the service thereof;

3. Limit the number of ambulance services;

4. Within its jurisdiction, fix, charge and collect fees for ambulance service within or outside of the county not exceeding the reasonable cost of the service; [and]

5. Establish necessary regulations not inconsistent with the statutes or regulations

of the Department of Public Health relating to ambulance service; * * *

* * *"

(Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intention of the General Assembly. (In re Marriage of Kates (2001), 198 Ill. 2d 156, 163.) Legislative intent is best evidenced by the language used in the statute. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.) Where statutory language is clear and unambiguous, it must be given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Under the plain language of section 5-1053 of the Counties Code, county boards are authorized generally to provide for emergency ambulance services in the county, and are expressly authorized to contract with private persons or organizations for the provision and operation of such ambulance service. Moreover, it is clear that county boards that determine to provide ambulance services are specifically authorized to "[l]imit the number of ambulance services" in the county. Therefore, it appears that the county board of Franklin County may enter into an exclusive franchise with a private emergency ambulance service provider and concomitantly limit the number of ambulance service providers in the county pursuant to section 5-1053 of the Code.

Secondly, you have inquired whether the county could require the franchisee, as a condition of receiving an exclusive franchise, "to provide a minimum number and quality of ambulances" to be stationed at designated sites located throughout the county. With respect to the number of ambulances and their distribution throughout the county, it appears that these are issues to be addressed under the terms of the county's contract or franchise agreement with the private ambulance service provider. Because of the possibility that these conditions will be subject to change over time, I would not suggest incorporating them in the county's ordinance authorizing the provision of ambulance service.

With respect to the "quality" of the ambulances, as you have noted, subsection 5-1053(c)(5) of the Code authorizes the county board to "[e]stablish necessary regulations not inconsistent with the statutes or regulations of the Department

of Public Health relating to ambulance service". Since it is unclear precisely what regulations are contemplated under the term "quality", I would suggest that you review the provision of the Emergency Medical Services Systems Act (210 ILCS 50/1 et seq. (West 2000)) and the Department of Public Health's regulations related thereto (77 Ill. Adm. Code 515.100 et seq. (January 1, 2002)) to ensure that any local regulations adopted are consistent with Illinois law.

You have also inquired whether, by implication, counties with fewer than 1,000,000 inhabitants are precluded from establishing minimum quality standards or otherwise regulating ambulances, given the language of section 5-1085 of the Counties Code (55 ILCS 5/5-1085 (West 2000)), which provides:

> "Ambulances. In counties of 1,000,000 or more inhabitants, a county board may license and regulate ambulances and ambulance drivers, attendants and equipment."

In other words, you have asked whether the express grant of authority to larger counties indicates that counties with fewer than 1,000,000 inhabitants may not exercise those powers.

Section 5-1085 of the Code traces its origins to "AN ACT to amend Section 25 of and to add Section 25.31 to 'AN ACT to revise the law in relation to counties'". (1967 Ill. Laws 2348.) At that time, only counties with populations over 1,000,000 inhabitants could license and regulate ambulances, ambulance drivers, attendants and equipment. There was no statutory grant of authority authorizing counties with a population of less than 1,000,000 inhabitants to license or otherwise regulate ambulance service.

Subsequently, however, the General Assembly determined that as a matter of public policy, emergency ambulance service should be available to every citizen of Illinois. (See Public Act 78-456, effective August 28, 1973.) Thus, as now set out in section 5-1053 of the Code, all county boards were granted the authority to provide ambulance service and to establish necessary regulations not inconsistent with the statutes or regulations of the Department of Public Health relating thereto. It is well established that different sections of the same statute should be construed as being consistent, rather than inconsistent, and interpreted as in pari materia. (Mann v. Board of Education of

Non-High School District No. 216 (1950), 406 Ill. 224, 230.) It appears that section 5-1053 of the Code grants to all counties the general authority to establish regulations for the operation of an ambulance service consistent with the regulations of the Department of Public Health. Section 5-1085, however, grants to counties with populations of 1,000,000 or more inhabitants additional authority to license and regulate specific aspects of ambulance service. Therefore, it does not appear that the provisions of section 5-1085 of the Code should be construed as denying counties with fewer than 1,000,000 population the power to regulate ambulance services.

Your fourth question concerns a municipality's authority to license and regulate ambulances pursuant to the provisions of section 11-5-7 of the Illinois Municipal Code (65 ILCS 5/11-5-7 (West 2000)). Specifically, you are concerned that the county may grant an exclusive county-wide franchise to a private ambulance service provider while one of the municipalities in the county may elect to enter into its own exclusive franchise for the provision of private ambulance services within its corporate boundaries. Section 11-5-7 of the Municipal Code provides, in pertinent part:

> "The corporate authorities of each municipality may license and regulate and establish standards for the operation of ambulances. The corporate authorities of each municipality may either contract for the operation of or operate ambulances as a municipal service and may make reasonable charges therefor and, in addition, may levy a tax for such purpose not to exceed .015% of the value, as equalized or assessed by the Department of Revenue, of all the taxable property in the municipality if the question of such tax has been submitted to the electors of the municipality and approved by a majority of those voting on the question.
> * * *
>
> * * * "
>
> (Emphasis added.)

Under the language of section 11-5-7 of the Municipal Code, it is clear that the corporate authorities of a

municipality are authorized to license and regulate the operation of ambulances within the municipality, and may contract for the operation of an ambulance service. Thus, it is foreseeable that a municipality could enter into an exclusive agreement with a private ambulance service provider to provide services within the municipality. Under section 11-5-7 of the Municipal Code and section 5-1053 of the Counties Code, it does not appear that counties have been granted the authority to preempt the power of municipalities to provide ambulance service within their territory. Therefore, it appears that the county's agreement would be applicable to all areas of the county unless and until such time as a municipality enters into an agreement for the provision of ambulance service within the municipality. If and when a municipality exercises the authority granted by section 11-5-7 of the Municipal Code, the municipality's franchise agreement would appear to supersede the terms of the county's franchise for those areas located within a municipality's corporate limits.

I would note, however, that article VII, section 10 of the 1970 Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 2000)) may provide a method whereby the county and a municipality, in cooperation with one another, may resolve this potential issue. Sections 3 and 5 of the Intergovernmental Cooperation Act (5 ILCS 220/3, 5 (West 2000)) respectively provide:

> "Intergovernmental cooperation. Any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law. * * *"
>
> "Intergovernmental contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or

> undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

Pursuant to these provisions, Franklin County and the various municipalities in Franklin County could enter into a joint agreement or contract to provide ambulance services to the unserved areas of the county. Such an agreement or contract could be structured in a variety of ways to address the county's granting of an exclusive franchise with the municipalities agreeing to forego the provision of separate ambulance service during the period in which the agreement is in effect, so long as the agreement is approved by the governing body of each entity involved.

You have next inquired whether the county may request proposals from various private ambulance service providers in the area and grant an exclusive franchise based upon the best overall package. Based upon the information we have been provided, it is not clear precisely what type of arrangement the county envisions creating with a private ambulance service provider. There is nothing in Illinois law, however, that would prevent the county from requesting proposals from any number of ambulance service providers, evaluating each of the proposals submitted on its merits and awarding the exclusive franchise based upon a particular ambulance service's satisfaction of specific county standards.

Your sixth question concerns whether the granting of an exclusive franchise would violate any fundamental concepts of free enterprise or be construed as a restraint of trade. Section 5-1014 of the Counties Code (55 ILCS 5/5-1014 (West 2000)) provides, in pertinent part:

> " * * *
>
> It is the policy of this State that all powers granted, either expressly or by

> necessary implication, by this Code, other Illinois statute, or the Illinois Constitution to non-home rule counties may be exercised by those counties notwithstanding effects on competition. It is the intention of the General Assembly that the 'State action exemption' to the application of federal antitrust statutes be fully available to counties to the extent their activities are authorized by law as stated herein."

In general, a State acting in its sovereign capacity can immunize units of local government from antitrust liability under the "State action" doctrine by expressly authorizing anticompetitive activities (such as an exclusive franchise). (Michigan Paytel Joint Venture v. City of Detroit (6th Cir. 2002), 287 F.3d 527, 534.) It appears, therefore, that the General Assembly has conferred immunity on counties that enter into exclusive contracts with ambulance service providers, and that such a contract would not constitute an unlawful restraint upon trade.

Lastly, you have inquired what recourse would be available if the county grants an exclusive franchise to a private ambulance service provider other than the current provider and the current provider continues to provide ambulance services in Franklin County. If the county determines to limit the number of ambulance services by ordinance, the ordinance would be subject to enforcement pursuant to the provisions of sections 5-1113 and 5-1114 of the Counties Code. (55 ILCS 5/5-1113, 5-1114 (West 2000).) In appropriate circumstances, it appears that injunctive relief could be sought to prevent the current service provider from continuing to offer services in Franklin County.

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:an