



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 3, 2021

I - 21-006

COUNTIES:

Authority to Lease Real Estate to Private
Individuals for Private Farming Operations;
Party Responsible for Paying Property Taxes
on Leased County Real Estate

-

The Honorable Nichole D. Kroncke
State's Attorney, Shelby County
301 East Main Street
Shelbyville, Illinois 62565

Dear Ms. Kroncke:

I have your letter inquiring: (1) whether a non-home-rule county has the authority to lease county-owned real estate to a private individual for a private farming operation for an annual cash rental payment to be paid to the county; and (2) if the county possesses the requisite authority to lease county real estate for the indicated use, which party is responsible for the payment of any property taxes that may be due on the property, the county or the lessee.

For the reasons stated below, (1) under section 5-21005 of the Counties Code (55 ILCS 5/5-21005 (West 2018)), a county may lease farm property or acreage acquired in connection with a county sheltered care home or county nursing home to public or private entities when it is deemed to be in the best interest of the county. Additionally, under section 5-1049.2 of the Counties Code (55 ILCS 5/5-1049.2 (West 2018)), a county board may lease real estate when, in the county board's opinion, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the county. Whether either of these provisions authorizes the lease of the county property that is the subject of your inquiry involves questions of fact that cannot be resolved in a legal opinion of this office. Moreover, (2)

whether the county or the lessee is responsible for the payment of property taxes on particular county property will require the review of the terms of the particular lease agreement and the uses to which the property will be devoted. The resolution of these issues involves questions of fact that cannot be resolved in a legal opinion of this office.

BACKGROUND

According to the information that you have provided, Shelby County owns several acres of real estate, referred to as the "Shelby County Farm," which it has leased to a private party for many years. The lease agreements (past and present) have provided that the property is to be used "for agricultural purposes only." The current lease,¹ a copy of which you have provided, states that the tenant shall pay Shelby County, as landowner, \$200 per acre, \$39,260, in two equal payments of \$19,630 as cash rent.² Lease Agreement, at 1.

Pursuant to the Lease Agreement, Shelby County has agreed to furnish, "as [its] investment and expenses: * * * [t]he above described farm, including the fixed improvements thereon[.]" materials deemed necessary for repairs and improvements on the farm, and skilled labor employed in making permanent improvements. Lease Agreement, at 1. Shelby County has also agreed to pay the costs of up to \$2,000 per year for necessary limestone. Lease Agreement, at 1.

The lessee-tenant agrees to provide, as his "investment and expenses[.]" all machinery, equipment, power, and labor necessary to farm the premises properly, and the labor, except skilled labor required for repairs and improvements. Lease Agreement, at 2. The lessee-tenant further agrees, among other things, to keep the farm neat and prevent unnecessary waste

¹Lease Agreement, County of Shelby, State of Illinois-Jim W. Hampton (February 13, 2019, extended from March 1, 2020, through February 28, 2021) (Lease Agreement).

²There are generally two kinds of farm leases in Illinois - cash rent leases and crop share leases. Both types have variations from traditional lease agreements. Dale Lattz, University of Illinois at Urbana-Champaign, Illinois Farm Management Handbook, Farm Business Management Resources, Cash Rent Leasing Fact Sheet (April 4, 2017) (UIUC Cash Rent Lease Fact Sheet), at 1, *available at* <https://farmdoc.illinois.edu/handbook/cash-rent-leasing-fact-sheet>. There are two types of cash rent leases. The most common is the fixed cash rent lease, where the operator pays the landlord a fixed cash payment, generally based on a per acre amount, and the landlord pays the real estate taxes and might incur some insurance cost for liability coverage on the land. UIUC Cash Rent Lease Fact Sheet, at 1. The other is a variable or flexible cash rent lease, where the cash rent amount paid per acre is based on some measure of productivity of the farm, such as crop yields, grain prices, or a combination of both. UIUC Cash Rent Lease Fact Sheet, at 1. Crop share leasing arrangements also vary but, typically, the landowner and operator split the crop and many of the crop inputs (such as seed, chemicals, fertilizer, custom application charges, crop insurance, drying, and storage), the landowner provides the land and pays the real estate taxes, and the operator provides the labor, machinery, and machinery operating expenses such as fuel and repairs. Dale Lattz, University of Illinois at Urbana-Champaign, Illinois Farm Management Handbook, Farm Business Management Resources, Crop Share Leases (April 4, 2017), at 1, *available at* <https://farmdoc.illinois.edu/handbook/share-rent-leasing-fact-sheet>.

or damage to the property, as well as to destroy noxious weeds and cut all weeds, sprouts, and brush in fence rows and on adjoining roads as often as needed. Lease Agreement, at 2. The lessee-tenant has also agreed to keep the cemetery, roadside, and waterways properly mowed, and to pay the costs for fertilizer, herbicides, and seed. Lease Agreement, at 1.

The Lease Agreement is silent as to which party is responsible for the payment of taxes. According to the information you have provided, Shelby County has previously paid the property taxes on the real estate in question. Before you took office, a disagreement arose regarding which party was responsible for paying the property taxes. As a result, neither the county nor the lessee-tenant is currently paying the property taxes.

ANALYSIS

County Authority to Lease County Farm

You first inquire whether a non-home-rule county, such as Shelby County, may lease county real estate to a private party to be used for a private farming operation for an annual cash rental payment paid to the county. 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 necessarily implied therefrom in order to effectuate the expressly granted powers. Ill. Const. 1970, art. VII, §7; *Redmond v. Novak*, 86 Ill. 2d 374, 382, 427 N.E.2d 53, 57-58 (1981); *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 724, 800 N.E.2d 1232, 1236 (2003); Ill. Att'y Gen. Inf. Op. No. I-20-004, issued April 16, 2020.

In opinion No. NP-843, issued November 27, 1974, Attorney General Scott was asked to determine whether a non-home-rule county may lease real estate owned by it and held in public trust to a private individual to be used for a private farming operation for an annual cash rental payment to the county. In concluding that the county could not lease real estate to a private individual for a private farming operation on an annual cash rental basis, the Attorney General first identified the general statutory authority of a county to lease its property set out in the precursor to what is now subsection 5-1005(2) of the Counties Code (55 ILCS 5/5-1005(2) (West 2018)) (*see* Ill. Rev. Stat. 1973, ch. 34, par. 303, as amended by Public Act 78-452, sec. 1), which provided, and still provides, that "[e]ach county shall have power * * * [t]o sell and convey or lease any real or personal estate owned by the county." Attorney General Scott then cited previously-issued Attorney General opinions which had consistently held that counties may not lease public property for private purposes.³ The Attorney General noted that article VIII,

³Ill. Att'y Gen. Op. No. NP-843 at 2, citing 1964 Ill. Att'y Gen. Op. 214 (county cannot lease unimproved land of the county farm to a private person); 1965 Ill. Att'y Gen. Op. 176 (county has no authority to lease county owned property for construction of a private dock nor lease a county farm to a private person); 1968 Ill. Att'y Gen. Op. 34 (county is not authorized to lease real estate owned by it for private, non-public purposes such as a physician's clinic).

section 1(a), of the Illinois Constitution of 1970, which provides that "[p]ublic funds, property or credit shall be used only for public purposes[.]" reaffirmed the general rule applied in Illinois since *Yakley v. Johnson*, 295 Ill. App. 77, 80-81, 14 N.E.2d 692, 693-94 (1938), that, absent specific statutory authority otherwise providing, counties are not empowered to lease public property for private purposes. Ill. Att'y Gen. Op. No. NP-843 at 3-4.

In opinion No. S-995, issued November 5, 1975 (1975 Ill. Att'y Gen. Op. 298), Attorney General Scott was asked to determine, among other things, whether the State's Attorney of a non-home-rule county had a duty to force the county board to dispose of a tract of farm land which was originally purchased and used as the county "poor farm," but had been leased on a crop share basis after the last resident of the poor farm left the premises in 1952. The letter requesting the opinion noted that, notwithstanding the issuance of opinion No. NP-843 and other Attorney General opinions, "the Logan County Board, and I am sure other county boards throughout the State of Illinois, continue to hold farming lands and operate farms in violation of statute." 1975 Ill. Att'y Gen. Op. at 298. In advising that the State's Attorney was under no duty to compel the sale of the county farm, Attorney General Scott reaffirmed the conclusions reached in opinion No. NP-843. 1975 Ill. Att'y Gen. Op. at 299.

Pursuant to opinion No. NP-843 and opinion No. S-995, the authority of a county "[t]o sell and convey or lease any real or personal estate owned by the county" as set out in subsection 5-1005(2) of the Counties Code does not, in itself, empower a county to lease its real estate to a private individual for a private farming operation. The issue, therefore, is whether there has been any change to the law subsequent to the issuance of these opinions that would authorize such a lease.

Subsequent to the issuance of opinion Nos. NP-843 and S-995, the General Assembly enacted Public Act 80-679, effective September 16, 1977, which amended the County Home Act (Ill. Rev. Stat. 1975, ch. 34, pars. 5361 *et seq.*), the precursor to division 5-21 of the Counties Code (55 ILCS 5/5-21001 *et seq.* (West 2018)). Specifically, Public Act 80-679 added the language emphasized below to section 4 of the County Home Act (Ill. Rev. Stat. 1975, ch. 34, par. 5363), the precursor to section 5-21005 of the Counties Code (55 ILCS 5/5-21005 (West 2018)):

Each county sheltered care home or county nursing home shall be conducted by the county, or counties in the case of a joint home, through its or their officers or employees, except that management may be provided by contract pursuant to Section 5-21006. A home shall not be let or rented to any individual, association, or corporation except that a county of more than 150,000 but less than 500,000 population may lease such home to any township in the county having more than 125,000 population. *However, the manner of operating a farm or acreage acquired in*

connection with a county sheltered care home or a county nursing home^[4] shall be within the sound discretion of the County Board.^[5] Such farms or acreage may be rented or leased to either public or private entities at such time or times and on such terms and conditions, including crop-sharing arrangements, as the Board deems best for the interest of the county. (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶22, 52 N.E.3d 319, 326 (2016). Legislative intent is best evidenced by the language used in the statute. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶21, 30 N.E.3d 288, 294 (2015). Where statutory language is clear and unambiguous, it must be given effect as written. *Klaine v. Southern Illinois Hospital Services*, 2016 IL 118217, ¶14, 47 N.E.3d 966, 970 (2016). When the meaning of a statute is not clear from the statutory language itself, it is proper to consider the purpose of the enactment, the evils to be remedied, and the legislative history of the statute. *People ex rel. Illinois Department of Corrections v. Hawkins*, 2011 IL 110792, ¶24, 952 N.E.2d 624, 632 (2011).

⁴Subsection 5-21001(1) of the Counties Code (55 ILCS 5/5-21001(1) (West 2018)) provides that, in any county that establishes and maintains a county sheltered care home or county nursing home as provided in subsection 5-1005(6) (*see* 55 ILCS 5/5-1005(6) (West 2018)), the county board has the power, among other things, "[t]o acquire in the name of the county * * * a suitable tract or tracts of land upon which to erect and maintain the home, and in connection therewith a farm or acreage for the purpose of providing supplies for the home and employment for such patients as are able to work and benefit thereby."

⁵Subsection 5-21001(9) of the Counties Code (55 ILCS 5/5-21001(9) (West 2018)) addresses the approval needed by the county board in order to lease, sell, or dispose of county home properties and provides:

In any county which establishes and maintains a county sheltered care home or a county nursing home for the care of infirm or chronically ill persons, as provided in Section 5-1005 [55 ILCS 5/5-1005 (West 2018)], the County Board shall have power:

* * *

9. Upon the vote of a 2/3 majority of all the members of the board, to sell, dispose of or lease for any term, any part of the home properties in such manner and upon such terms as it deems best for the interest of the county, and to make and execute all necessary conveyances thereof in the same manner as other conveyances of real estate may be made by a county. However, if the home was erected after referendum approval by the voters of the county, it shall not be sold or disposed of except after referendum approval thereof by a majority of the voters of the county voting thereon.

If the home was erected after referendum approval by the voters of the county, the county nursing home may be leased upon the vote of a 3/5 majority of all the members of the board.

Under the plain and unambiguous language of section 5-21005 of the Counties Code, "the manner of operating a farm or acreage *acquired in connection with a county sheltered care home or a county nursing home* shall be within the *sound discretion of the County Board*." (Emphasis added.) Additionally, the plain language of section 5-21005 expressly provides that "[s]uch farms or acreage may be rented or leased to either public or private entities at such time or times and on such terms and conditions, including crop-sharing arrangements, as the Board deems best for the interest of the county." (Emphasis added.) By adding this language to section 5-21005, the General Assembly has expressly authorized the county board to lease farm acreage acquired in connection with a county sheltered care home or county nursing home to public or private entities when deemed in the best interest of the county.

Although the language of section 5-21005 authorizes the county board to lease farm or acreage "acquired in connection with" a county sheltered care home or county nursing home, it may be argued that the language does not apply if a county is not currently operating a county sheltered care home or nursing home. To the extent the application of the leasing provision is ambiguous in this regard, it is helpful to review its legislative history. During the legislative debates on Senate Bill 189, which as enacted became Public Act 80-679, the Senate sponsor explained the purpose behind the enactment:

*a county farm is a farm that's ordinarily owned by a county in downstate Illinois. This practice arose many years ago back in the late 1800's and early 1900's. Many counties in downstate Illinois took title to a farm which might be used for agricultural purposes and later became used for the elderly in many downstate counties and later in the past decade or two, this has somewhat gone out of vogue, and they have been leased for the most part by downstate counties to farmers. I could go into the substance of the bill * * *, but it only ratifies what many downstate counties have been doing namely leasing their county farms. There's no specific statutory authority for these leases and that's the purpose of the bill.* (Emphasis added.) Remarks of Sen. Roe, May 17, 1977, Senate Debate on Senate Bill No. 189, at 119.

When asked whether there continued to be a need for counties to own farms any longer and whether counties ought to sell their farms, the Senate sponsor replied:

the bill is not intended to in anyway strengthen the hands of the * * * counties and encourage them to keep farm lane [*sic*]. *It's intended to * * * ratify what many counties are presently doing and nothing more than that. Obviously, it's within the power of all counties * * * to sell the county farms that they presently possess,*

and this bill in no way would restrict them from doing that.
(Emphasis added.) Remarks of Sen. Roe, May 17, 1977, Senate
Debate on Senate Bill No. 189, at 121.

Additionally, Senator Grotberg stated:

I rise in support of this bill * * * for the following reasons, that
*Illinois law presently makes no direct reference to the ability of
counties to rent or lease farms which they own. The Attorney
General has issued an opinion on the subject citing the County
Home Act as restricting counties from the practice.^{6]} Senate Bill
189 would correct that ambiguity so that they could proceed in
whatever direction they want[.]* (Emphasis added.) Remarks of
Sen. Grotberg, May 17, 1977, Senate Debate on Senate Bill No.
189, at 121.

The legislative history thus makes clear that non-home-rule counties may lease farm acreage that was acquired in connection with the operation of a county home to a private farmer if it is deemed to be in the best interests of the county.

You have not provided us with any information concerning how the farm acreage in question was acquired. Thus, whether the property in question may be leased in accordance with the provisions of section 5-21005 is a question of fact that cannot be resolved in a legal opinion of the Attorney General. See Statement of Policy of the Illinois Attorney General Relating to Furnishing Written Opinions, <http://www.illinoisattorneygeneral.gov/opinions/opinionpolicy.pdf>.

⁶Neither opinion No. NP-843 nor opinion No. S-995 cite to the County Home Act as a basis for concluding that a county may not lease county farmland to a private farmer. However, opinion No. F-1478, issued October 26, 1965 (1965 Ill. Att'y Gen. Op. 176), which is cited in opinion No. S-995, addressed whether a county may lease farmland to a private party under a share crop lease agreement in a circumstance where the county has a county home and the farmland as a part of the same area. Without citing to the County Home Act, opinion No. F-1478 concluded that a county cannot lease unimproved land of a county farm to a private person. In reaching this conclusion, opinion No. F-1478 refers to opinion No. F-1236, issued August 4, 1964 (1964 Ill. Att'y Gen. Op. 214), which addressed whether a county board may lease a county farm (exclusive of buildings which are used to house "inmates") to a private individual for an annual cash rental and, if not, whether income from the operation of the farm may be used for general county purposes. Opinion No. F-1236 concluded that a county board may not lease public property for private purposes, and that nothing in the precursor to section 5-21005 of the Counties Code (Ill. Rev. Stat. 1963, ch. 23, par. 417) restricted the use of any income earned from the operation of the farm.

The General Assembly has also enacted other statutory provisions that authorize the county board to lease county real estate for specific purposes.⁷ Notably, Public Act 88-526, effective December 23, 1993, added section 5-1049.2 to the Counties Code (55 ILCS 5/5-1049.2 (West 2018)), which currently provides:

The county board may lease real estate acquired or held by the county for any term not exceeding 99 years and may lease the real estate when, in the opinion of the county board, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the county. The authority to lease shall be exercised by an ordinance passed by three-fourths of the county board members then holding office, at any regular meeting or at any special meeting called for that purpose. However, the county board may authorize any county officer to make leases for terms not exceeding 2 years in a manner determined by the Board. (Emphasis added.)

Under the plain and unambiguous language of section 5-1049.2, the county board may lease real estate when, in the county board's opinion, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the county. During the legislative debates on Senate Bill 95, which was enacted as Public Act 88-526, the House sponsor indicated that "the language is drafted so [the county board] *can lease either to a governmental agency or to private interests* that may be interested in additional office space. Kankakee County has acquired a new county building * * *. They have excess office space. They see this as an opportunity to gain some additional revenue. * * * [T]hey just need the statutory authority to lease." (Emphasis added.) Remarks of Rep. Weller, October 29, 1993, House Debate on Senate Bill No. 95, at 49. The General Assembly has thus left it within the discretion of the county board to determine whether real estate held or owned by the county is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the county such that a lease would be appropriate. Whether section 5-1049.2 of the Counties Code may apply to the county property in question, again, is a question of fact that cannot be resolved in a legal opinion of this office.

⁷Public Act 87-939, effective August 28, 1992, among other things, added section 5-1049.1 to the Counties Code (*see* 55 ILCS 5/5-1049.1 (West 2018)), to authorize the county board to lease lands owned by the county for \$1 per year if the county board determines that the lease will serve "public health purposes." Public Act 94-401, effective August 2, 2005, later amended section 5-1049.1 of the Counties Code to also include leases which serve public safety purposes as described by subsection 10(j) of the Illinois Emergency Management Agency Act (*see* 20 ILCS 3305/10(j) (West 2018)). You have not provided us with information that would suggest that the farm lease was determined to serve either public health or public safety purposes.

We note that the General Assembly is vested with broad discretion in determining whether a particular enactment serves a public purpose within the meaning of article VIII, section 1(a), of the Illinois Constitution. *Wirtz v. Quinn*, 2011 IL 111903, ¶78, 953 N.E.2d 899, 917 (2011); *In re Marriage of Lappe*, 176 Ill. 2d 414, 429-30, 680 N.E.2d 380, 388 (1997). Accordingly, when the General Assembly expressly authorizes a county to lease county property to a private entity, there is a presumption that a proper public purpose exists. *Wirtz*, 2011 IL 111903 at ¶78, 953 N.E.2d at 917; *Lappe*, 176 Ill. 2d at 429-30, 680 N.E.2d at 388; *Compare* 1974 Ill. Att'y Gen. Op. 297 (county real estate may be leased to physicians who will locate their private offices upon it pursuant to express statutory provision [Ill. Rev. Stat. 1973, ch. 85, pars. 921 *et seq.*] authorizing counties and other units of local government to acquire, erect, and maintain a medical service facility and lease space therein to doctors), *with* 1968 Ill. Att'y Gen. Op. 34 (county is not authorized to lease real estate owned by it for private, non-public purposes such as a physician's clinic). Therefore, it will be necessary for you to review the documents transferring ownership of the property in question to the county and to discuss with the county board its intended uses for the property to determine whether the property falls into any of the noted statutory provisions.

Taxation of Public Property Leased for Private Farming

You also inquire which party to a county farm lease is responsible for the payment of property taxes. By express statutory provision, the owner of real property on January 1 of any year is liable for the taxes on the property for that year. 35 ILCS 200/9-175 (West 2018).⁸ However, parties may, through clear agreement, shift that burden of liability. *Kankakee County Board of Review v. Property Tax Appeal Board*, 316 Ill. App. 3d 148, 151, 735 N.E.2d 1011, 1014 (2000); *First National Bank v. Mid-Central Food Sales, Inc.*, 129 Ill. App. 3d 1002, 1005, 473 N.E.2d 372, 374 (1984). As indicated previously, the Lease Agreement that underlies your inquiry is silent with respect to which party is responsible for the payment of property taxes.

Additionally, as the Supreme Court of Illinois has explained, "[r]eal estate taxes are only permitted against owners of land. The only exception to this rule is found in section 9-195 of the Property Tax Code [citation], which allows the assessor to tax the leasehold interest of the lessee in property leased to it by an owner whose property is exempt." (Emphasis omitted.) *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 297-98, 948 N.E.2d 1, 12 (2010). Section 9-195 of the Property Tax Code (35 ILCS 200/9-195 (West 2018)) currently provides, in pertinent part:

⁸See also 35 ILCS 200/20-5(a) (West 2018) ("[a] copy of the [tax] bill shall be mailed * * * to the owner of the property taxed or to the person in whose name the property is taxed").

(a) *Except as provided in Sections 15-35,^[9] 15-55,^[10] 15-60,^[11] 15-100,^[12] 15-103,^[13] 15-160,^[14] and 15-185,^[15] when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes. However, no tax lien shall attach to the exempt real estate. (Emphasis added.)*

Under section 9-195 of the Property Tax Code, "when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable," the leasehold estate is listed as the property of the lessee and taxes shall be collected in the same manner as on property that is not exempt.

⁹Section 15-35 of the Property Tax Code (35 ILCS 200/15-35 (West 2018)) generally exempts school property from taxation.

¹⁰Section 15-55 of the Property Tax Code (35 ILCS 200/15-55 (West 2019 Supp.)) generally exempts State property from taxation. Subsection 15-55(a) (35 ILCS 200/15-55(a) (West 2019 Supp.)) provides, however, that leased property shall be assessed to, extended to, and billed to the lessee, and collected in the same manner as for property which is not exempt. Section 15-55 also includes specific provisions addressing specific leases or properties. *See* 35 ILCS 200/15-55(b) through (h) (West 2019 Supp.).

¹¹Section 15-60 of the Property Tax Code (35 ILCS 200/15-60 (West 2019 Supp.)), discussed more fully in the opinion, provides that certain county, municipality, and taxing district property is exempt from taxation.

¹²Section 15-100 of the Property Tax Code (35 ILCS 200/15-100 (West 2018)) generally exempts from taxation property belonging to any municipal corporation created for the sole purpose of owning and operating a transportation system for public service.

¹³Section 15-103 of the Property Tax Code (35 ILCS 200/15-103 (West 2018)) addresses property owned by the Bi-State Development Agency of the Missouri-Illinois Metropolitan District Act.

¹⁴Section 15-160 of the Property Tax Code (35 ILCS 200/15-160 (West 2018)) addresses property belonging to an airport authority and used for an airport or for a navigation facility.

¹⁵Section 15-185 of the Property Tax Code (35 ILCS 200/15-185 (West 2019 Supp.)) addresses property owned by a municipality with a population of over 500,000 inhabitants, a unit of local government whose jurisdiction includes territory in a municipality over 500,000 inhabitants, or a home rule municipality that is contiguous to a municipality over 500,000 inhabitants.

In order to determine whether the county property currently at issue is exempt, it is necessary to review section 15-60 of the Property Tax Code (35 ILCS 200/15-60 (West 2019 Supp.)) which provides, in pertinent part:

All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, as is all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.

Also exempt are:

* * *

(b) all public buildings belonging to any county, township, or municipality, with the ground on which the buildings are erected[.] (Emphasis added.)

As the Illinois Appellate Court has explained, "three elements must be met for the property to be exempt under section 15-60: (1) the property must be owned by a taxing district; (2) the property must be held for future expansion; and (3) the property must be not for use for other than a public purpose." *Springfield School District No. 186 v. Department of Revenue*, 384 Ill. App. 3d 715, 723-24, 893 N.E.2d 1042, 1050-51 (2008). As to the first element, the property in question is owned by a taxing district, a term which includes counties.¹⁶ In order to meet the second element, a "tax-exempt owner must demonstrate a present intent to own and use the property for a tax-exempt purpose in the future to qualify for an exemption under section 15-60." *Springfield School District No. 186*, 384 Ill. App. 3d at 724, 893 N.E.2d at 1051. Finally, the third element is whether the lessee's "use of the property is for public purposes and no other purposes." *Springfield School District No. 186*, 384 Ill. App. 3d at 724, 893 N.E.2d at 1051. A determination that all three elements apply involves mixed questions of fact and law. *Springfield School District No. 186*, 384 Ill. App. 3d at 725, 893 N.E.2d at 1051.

¹⁶The term "taxing district" is defined in the Property Tax Code as "[a]ny unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (West 2018). However, the term "unit of local government" is not defined in the Property Tax Code. Accordingly, it must be ascribed the meaning established for it in the Statute on Statutes (5 ILCS 70/0.01 *et seq.* (West 2018)).

Under section 1.28 of the Statute on Statutes (5 ILCS 70/1.28 (West 2018)), the term "unit of local government" has the meaning "established in Section 1 of Article VII of the Constitution of the State of Illinois of 1970." Under the indicated Constitution provision, "units of local government" include, among other things, counties. Ill. Const. 1970, art. VII, §1.

As previously noted, factual questions cannot be resolved in a legal opinion of the Attorney General. To provide guidance, however, we note that in *Dundee Township v. Department of Revenue*, 325 Ill. App. 3d 218, 757 N.E.2d 982 (2001), a township purchased a parcel of vacant land that was leased to individuals for commercial farming pursuant to the open space provisions of the Township Code (60 ILCS 1/115-5 *et seq.* (West 1998)). The township renewed the farm lease and then sought a tax exemption for the entire parcel of land pursuant to section 115-115 of the Township Code (60 ILCS 1/115-115 (West 1998)), which provided a real estate tax exemption for "[a]ll property acquired * * * for open space purposes pursuant to an open space program[.]" *Dundee Township*, 325 Ill. App. 3d at 220, 757 N.E.2d at 983. The Department of Revenue approved an exemption for the township's fee interest, but took the position that a leasehold assessment should be levied pursuant to section 9-195 of the Property Tax Code (35 ILCS 200/9-195 (West 1998)). *Dundee Township*, 325 Ill. App. 3d at 220, 757 N.E.2d at 984.

On administrative review, the trial court affirmed the Department's decision. The Illinois Appellate Court construed the provisions of the Township Code together with sections 9-195 and 15-60 of the Property Tax Code (35 ILCS 200/9-195, 15-60 (West 1998)), and held that property acquired pursuant to a township's open space program but leased for commercial farming purposes was not entitled to property tax exemption for the leasehold, although the property remained exempt as long as it was acquired for open space purposes pursuant to an open space program. *Dundee Township*, 325 Ill. App. 3d at 223-25, 757 N.E.2d at 985-87. Accordingly, pursuant to section 9-195 of the Property Tax Code, the lessee was responsible for the payment of taxes on the subject property. *Dundee Township*, 325 Ill. App. 3d at 223, 757 N.E.2d at 986.

Therefore, you will need to review with the county board its intended future use of the land and the specific terms of the lease agreement to determine whether elements 2 and 3 of the case law implementing section 15-60 of the Tax Code have been satisfied. Further, you will also need to determine whether section 9-195 is applicable to the lease agreement.

CONCLUSION

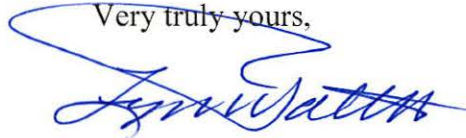
Under the language of section 5-21005 of the Counties Code, a county may lease farm property or acreage acquired in connection with a county sheltered care home or county nursing home to public or private entities when deemed in the best interest of the county. Additionally, under section 5-1049.2 of the Counties Code, a county board may lease real estate when, in the county board's opinion, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the county. Whether either of these provisions authorizes the lease of the county property that is the subject of your inquiry involves questions of fact that cannot be resolved in a legal opinion of this office. Absent a specific

The Honorable Nichole Kroncke - 13

provision in a lease agreement, whether the county or the lessee is responsible for the payment of taxes that may result from a county's lease of its property for private farming purposes involves a factual determination that cannot be resolved in a legal opinion of this office.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lynn E. Patton", written over a blue oval-shaped line.

LYNN E. PATTON
Chief, Public Access and Opinions Division
and Administrative Counsel

LEP:KMC:LAS:an