

Often it's not what we are told about a particular new piece of legislation but more importantly what we are NOT being told.

We understand this legislation stems from Shelby County, who after failing to properly budget realized they would not be able to move forward with a custom farming operation of their land, which the county controls all aspects of the operation to include crop ownership and sale. **When a county fails to budget the costs of putting a crop in the ground, the answer is not to draft new legislation.**

When they attempted to amend the budget, they quickly realized they could not meet the established provisions for such an amendment. Had they done so, according to the county code, they would have committed a Class B Misdemeanor. **Maybe a more appropriate legislation would be to amend the Budget Act for Counties.**

Are the members aware that a violation of Article VIII Section 1 by a public official constitutes a felony?

This legislation is unable to meet the public purpose requirement in Article VIII Section 1 of our State Constitution and they believe by simply claiming it's a public purpose to lease to private entities that changes well established case law. **It does not.**

We do not dispute a Counties legal right to lease property to either public or private entities. They have had that right for many years and there is no need for additional legislation. However, private entities obtaining such a lease **must use the property for a public purpose.**

The issue in this matter ties to well established case law as it relates to what is or is not a public purpose.

The Illinois Annotated Constitution, prepared by the Illinois General Assembly Legislative Research Unit spells out quite clearly what constitutes a public purpose.

*“Several Attorney General’s opinions have addressed leasing of county-owned real estate to other persons or organizations. Those opinions advised that **not only must such leases be for adequate consideration to the county** (unless the county is authorized by law to make a donation to the lessee), **but the use to which the lessee puts the property must itself benefit the public, such as providing space for other units of government or for legislators.**” [\(see page 129 of the Annotated Constitution\)](#)*

As you can see, Public Purpose, as it relates to a lease of property has two prongs. The adequate consideration to the county **and** the use of the property being leased.

The drafters of this legislation are attempting to change the well-established public purpose criteria by claiming the consideration of funds from leasing constitutes a public purpose.

(“for the public purpose of financially supporting the operations of government”)

The statute is void of the proper language on public purpose found in other parts of the county code because applying that standard language would stifle their attempt to lease farm ground to private farmers.

55 ILCS 5/5-1049 – “..may supervise or regulate their use for any **proper public purpose**”

55 ILCS 5/5-1050 – “...For the **public purposes** set forth in the Illinois Finance Authority Act”, which states “20 ILCS 3501/801-10 - c) The term "public purpose project" means (i) any project or facility, including without limitation land, buildings, structures, machinery, equipment and all other real and personal property, which is authorized or required by law to be acquired, constructed, improved, rehabilitated, reconstructed, replaced or maintained by any unit of government or any other **lawful public purpose**”

They ignore not only their own General Assembly Legislative Research Unit but also ignore well established case law on the subject of public purpose.

“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 i]78, 953 N.E.2d at 917; Lappe, 176 Ill. 2d at 429-30, 680 N.E.2d at 388;”

When a private farming operation enters a lease with county government the use of the land is not for any public use but rather the farmers exclusive right to farm the ground for profit. This fact is well established, and the Department of Revenue has deemed such county property subject to property tax because it is no longer qualified as tax exempt government property. That fact affirms the second public purpose prong has not been met. If there was a public use in such an arrangement the property would be tax exempt.

A qualifying example would be a lease to a private entity who will make the land available for the public use, such as garden plots.

The lease of farm ground at airports has a well-established restriction that the revenue can only be used for the support of the airport and has been deemed to meet a public purpose because the general public can use the airport. The same is found with County sheltered care home or a county nursing home for the care of infirm or chronically ill persons, as provided in Section 5-1005

How is the public use of the land complied with when a private farming operations has such a lease? The County making money off the lease only addresses one of the two required prongs.

More troubling is language in the bill that points to acquired farmland. It does not cite to when such land was acquired and appears to open the door for further acquisitions of farm ground with taxpayer funds. Our Appellate court made it clear, “**The powers of counties are public and they are not authorized to go into private business.**” (citation below)

Considering Illinois is one of the top agricultural states in this country I think it would be wise to not open the door for government to compete with private farming operations which clearly can

happen with this proposed legislation. Leave the farming business to the farmers, not elected county officials, of which few have any actual farming expertise.

Additionally, The language points to a maximum lease of 99 years. If a county were to lease their property for 4 or more years, they have removed the voter's rights to make change through an election. Are you familiar with the case law pertaining to binding the hands of future boards?

This bill appears to be an attempt to re-write 55 ILCS 5/5-1049.2

(55 ILCS 5/5-1049.2)

Sec. 5-1049.2. Lease of county property. 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.

(Source: P.A. 88-526.)

Farm ground is county property. Why is new legislation needed when leasing power was already provided?

I raised these issues with the Representative Yednock and Bourne and as of this date have not received any response to my questions.

I can answer the question. This legislation is drafted to attempt to claim the generation of revenue from leasing farm ground constitutes a Public Purpose. That is not true as it ignores the well-established case laws on what constitutes a public purpose, which is not just a consideration of revenue. The second prong cannot be ignored, which is exactly what this legislation does.

From AG opinion NP -8431:

*"I stated that this section reaffirmed the rule that counties are not empowered to lease public property **for private purposes**. This rule was explained in Yackley v Johnson , 295Ill App. 77 at 80-81 as follows":*

*"Counties are mere political divisions of the territory of the State, as a convenient mode of exercising the political, executive, and judicial powers of the State. They were created to perform public, and not private functions. They are wholly public in their character, and are a portion of the state organization. All their powers are conferred, and duties imposed, **by the constitution and statutes of the state**. They are public, and all the property they hold is for public use. It belongs to the public , and the county is but the agent vested with the title, to be held for the public."*

"Counties are but local subdivisions of the State, established by the sovereign power of the State, clothed with but few corporate powers, and these not of a private, but rather of a governmental

*character, relating to the support of the poor, the making of public highways and the general administration of justice within their respective boundaries." In further defining the duties of a county it was said in the case of Dunne v. County of Rock Island, 283 Ill. 628, "The purposes of a Court House, public buildings and a jail, which counties are required to erect and maintain, are the administration of justice, the collection of the public revenue, and the performance of public functions. **The powers of counties are public and they are not authorized to go into private business.**"*

This legislation ignores our State Constitution, specifically Article VIII Section 1, public funds, property and credit shall only be used for public purposes.

Any lease to a private entity must meet the well established case law tests on public purpose. Leasing to a private farmer does not meet that established criteria and one only need to compare all the language from both our own Attorney General opinions over the years and numerous case laws dealing with public purpose.

Allowing this bill to become law will lead to unnecessary litigation as there are people standing at the ready to take court action if a lease is issued to a private entity who's use of public property only servers the lease holder, not the public.

I urge you to vote no on this legislation and I welcome any questions you may have.