ish, repair, alter and erect new buildings within a Commission's area and within the purpose of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1044(c)), and to borrow money and issue revenue bonds as evidence thereof (Ill. Rev. Stat. 1979, ch. 85, par. 1944(m)). A Public Building Commission, as a body both corporate and politic, is authorized, through its board of commissioners, to exercise the powers and authority prescribed in the Act without direction from the county board which created it.

As a general rule, a county board can exercise only such powers as are expressly granted by the legislature or necessarily implied from the powers so expressly granted. (*Heidenreich* v. *Ronske* (1962), 26 Ill. 2d 360, 362.) Consequently, the county board may exercise only the degree of control over the Public Building Commission as is provided by the Act. Subsection 14 (a) (2) (Ill. Rev. Stat. 1979, ch. 85, par. 1044(a) (2)) requires approval of certain proposed project sites by the governing board of the county. Moreover, the county board has the authority, under certain specified conditions, to dissolve a Public Building Commission.

Subsection 22.1(b) of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1052.1) provides that:

"(b) *Any Public Building Commission which has fulfilled the purpose for which it was created, and all bonds issued by it and all of its contractual obligations except personnel contracts have been paid, may be dissolved, upon the filing by the presiding officer of the municipality, county seat or county board which organized such Commission*, in the office of the Recorder of Deeds, a copy of a resolution adopted by the governing body of such municipality, county seat or county board approving such dissolution. Upon the dissolution of such Commission pursuant to this subsection, the Treasurer of the Commission shall cause all remaining funds under his control to be transferred to the Treasurer of the municipality, county seat or county which organized the Commission." (Emphasis added.)

Subsection 22.1(b) provides for the dissolution of a Public Building Commission upon the filing of a resolution by the county board when it has fulfilled the purpose for which it was created, that being those purposes stated in section 2 of the Act, and has paid all bonds and contractual obligations with the exception of personnel contracts. Although a county board may dissolve a Building Commission which it organized when the above conditions are met, nothing in the Act states or implies that the county board has the authority to limit the Public Building Commission to a single building or project. As a practical matter, however, it appears that, in this particular instance, the county board could adopt and cause to be filed a resolution for dissolution of the Commission after the correctional facility has been constructed and paid for, assuming that there are no outstanding bonds or contracts remaining unpaid.

(No. 80-039—October 29, 1980)

STATE MATTERS: *Authority of Department of Transportation to Enter into Coal Mining Lease with Respect to Land Within Its Jurisdiction.* Pursuant to statutory authority, the Department of Transportation may, subject to certain conditions, lease mining rights to land within its jurisdiction to a private corporation.

STATUTES CONSTRUED: Illinois Revised Statutes 1979, chapter 127, paragraph 49.13.

John D. Kramer, Secretary, Illinois Department of Transportation, Springfield, Illinois.

I have your letter wherein you inquire whether the Illinois Department of Transportation has the authority to enter a coal mining lease with a private corporation under which the corporation is granted the right to mine under State-owned lands within the Department's jurisdiction in exchange for royalty payments to the State. For the reasons hereinafter stated, it is my opinion that the Department of Transportation may, under the facts of this particular case, enter into such an agreement.

According to your letter, the facts are presently as follows:

"A private coal company wishes to enter an agreement with the Department of Transportation under which the company will mine coal under lands upon which a State highway is situated. The State has title to the coal. The company originally planned to conduct normal mining operations but this was rejected by the Department on the ground that there would be an unacceptable risk of subsidence. The company has submitted a revised plan under which coal would be mined under the highway only in tunnels which would allow access to coal owned by the company which is situated on the other side of the State highway right-of-way. The revised plan has been reviewed by the Department's geologist and by officials of the State Geological Survey. It is their opinion that subsidence is unlikely under the revised plan.

* * * It is proposed that the State, by and through the Department, enter a coal mining lease for a period not to exceed five years under which the company is allowed to mine coal under the revised plan in exchange for royalty payments to the State.

* * *

Under the proposed lease, the mining would be underground and would not involve alteration of the highways for mining purposes. The Department would insist that any lease entered include a provision that the mining company be responsible for any damage to the highway caused by subsidence due to the mining."

From an examination of the statutes, it is clear that the Department of Transportation has the authority, subject to certain conditions, to lease any land or property within its jurisdiction. (Ill. Rev. Stat. 1979, ch. 127, par. 49.13.) Section 49.13 of the Illinois Civil Administrative Code (Ill. Rev. Stat. 1979, ch. 127, par. 49.13) provides that the Department of Transportation has the power:

"*From time to time to lease any land or property*, with or without appurtenances, *of which the department has jurisdiction, and which are not immediately to be used or developed by the State; provided that no such lease be for a longer period of time than that in which it can reasonably be expected the State will not have use for such property, and further provided that no such lease be for a longer period of time than 5 years.*" (Emphasis added.)

Thus, it appears from the statute itself that it is the intent of the General Assembly that property not currently nor expected to be used may be leased and put to some use, provided that no such lease be longer than five years.

According to your letter, the proposed lease will authorize only the limited mining operations. This plan has been reviewed by the Department's geologist and officials of the State Geological Survey and it is their expert opinion that subsidence is unlikely. As an added safeguard, you have noted that the Department would insist that any lease entered into include a provision that the mining company be responsible for any damage to the highway caused by subsidence due to the mining, if that should occur. Moreover, it is my understanding that the granting of the mining lease will not result in any obstruction of or interference with the rights of the public to the full and free use of the highway, or otherwise interfere with the surface rights to the land, which are not subject to the lease agreement. Because only a limited amount of coal will be mined under the agreement, the Department is not authorizing the depletion of a State asset, nor is it authorizing the use of public property for private purposes.

Having the statutory authority to lease an interest in State property, the Department must exercise that power in strict accordance with the limitations imposed by statute. Consequently, the Department has only the power to *lease* land or property. Because coal under the soil and mineral rights are interests in real estate capable of being conveyed (*Fowler* v. *Marion and Pittsburg Coal Co.* (1924), 315 Ill. 312, 314-15; *Decatur Coal Co.* v. *Clokey* (1928), 332 Ill. 253, 262-63), it is clear that, based upon the language of the statute, the Department may enter into an agreement with the corporation for the lease of that interest. Moreover, it has been held that right to use underground passages for mining purposes after coal has been removed may be a part of the leasehold agreement and, as such, is a valid incident of a mining right in land. *Big Creek Coal Co.* v. *Tanner* (1922), 303 Ill. 297, 303; *Atteberry* v. *Blair* (1910), 244 Ill. 363, 372-73.

Finally, as is true with contracts generally, the provisions of the lease must be supported by sufficient and valid consideration. It is my understanding that the State, in exchange for granting the mining rights, is to receive royalty payments, which payments, under certain circumstances, may constitute adequate consideration. *Davis* v. *Nokomis Quarry Inc.* (1979), 77 Ill. App. 3d 1011, 1013.

Therefore, it is my opinion that the Department of Transportation may, so long as the consideration is adequate, enter into a coal mining lease in accordance with the terms outlined in your letter.

(No. 80-040—November 26, 1980)

BUSINESS CORPORATIONS: *Close Corporations*. Corporations authorized by either the Medical Corporation Act or Professional Service Corporation Act may form a close corporation, or elect to become a close corporation, pursuant to the Close Corporation Act.

STATUTES CONSTRUED: Illinois Revised Statutes 1979, chapter 32, paragraphs 157.3-1, 157.3-2, 415-4, 632, 633, 1201 *et seq.*

Hon. Alan J. Dixon, Secretary of State, State of Illinois, Springfield, Illinois.

I have your letter in which you ask whether a medical corporation or a professional service corporation can form a close corporation, or if existing, elect to become a close corporation under the Close Corporation Act. For the reasons hereinafter stated, it is my opinion that both medical and professional service corporations can form a close corporation, or elect to become a close corporation.

Section 2 of the Medical Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 632), which relates to the formation of a corporation under that Act, provides as follows:

"One or more persons licensed pursuant to the Medical Practice Act, as heretofore or hereafter amended, may form a corporation pursuant to the Business Corporation Act, * * *."

Section 3 of the Medical Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 633) provides:

"The Business Corporation Act, as heretofore or hereafter amended, shall be applicable to such corporations, including their organization, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except so far as the same may be limited or enlarged by this Act. If any provision of this Act conflicts with the Business Corporation Act this Act shall take precedence."

Medical corporations, therefore, are subject to the Business Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 157.1 *et seq.*). Section 3.1 of that Act expressly provides that medical corporations may be organized under it:

"Medical corporations, as authorized by 'The Medical Corporation Act', enacted by the Seventy-third General Assembly, as hereafter amended, may be organized under this Act."

Professional service corporations are authorized by the Professional Service Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 415-1 *et seq.*). Section 4 of the Act (Ill. Rev. Stat. 1979, ch. 32, par. 415-4), which is similar to section 3 of the Medical Corporation Act, provides as follows:

"'The Business Corporation Act' filed July 13, 1933, as now or hereafter amended, shall be applicable to professional corporations organized under this Act, and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except where inconsistent with the letter and purpose of this Act. * * *
* * *
"

As with medical corporations, the intent to bring professional service corporations under the provisions of the Business Corporation Act is expressly provided by section 3.2 of the Act (Ill. Rev. Stat. 1979, ch. 32, par. 157.3-2):