

the appearance and in the presence of the accused. By the very nature of Paternity actions there is difficulty of proof of one's innocence. A putative father should be present in order that he may offer testimony or other evidence to controvert the testimony and evidence of the complainant. If after hearing the evidence of the complainant and the refuting evidence of the accused, the court is of the opinion that no sufficient cause is established, it shall dismiss and discharge the defendant.

In my opinion, the only way jurisdiction of the accused can be obtained in a Paternity action pursuant to the Paternity Act is by the issuance and personal service of a warrant. Further, it is my opinion that the accused must be physically present at the Paternity proceedings in order that he might controvert evidence offered by the complainant.

(No. F-1478—October 26, 1965)

COUNTIES AND COUNTY BOARDS—Lease of County Property. Counties are authorized by statute to lease property for public purposes but have no authority to lease unused property for private purposes. A county may not lease property for the construction of a private dock nor lease a county farm to a private person.

STATUTES CONSTRUED—Illinois Revised Statutes 1965, Chapter 34, Paragraph 303.

Hon. Robert E. Richardson, State's Attorney, LaSalle County, Ottawa:

I have your letter concerning authority of a county to lease its property for private purposes and requesting my opinion upon the following questions:

- "1. I have been requested by the LaSalle County Board of Supervisors to request an opinion concerning the following. Sometime ago the County of LaSalle, through the Board of Supervisors authorized the leasing of a portion of county-owned property to a private corporation for the construction of a dock to be built along the Illinois River. This particular piece of ground is not actually being used by the County but the question has arisen as to whether or not the county has the authority to make such a lease.
- "2. The second point of inquiry, on which I request your opinion, is where a county has a county home and farm land as a part of the same area, may a county lease out the farm land on a normal farm lease to a private party under the usual share crop lease arrangement?"

Counties are authorized to lease their property by Illinois Revised Statutes, Chapter 34, Paragraph 303, which provides in part:

"Each county shall have power—First—To purchase and hold the real and personal estate necessary for the uses of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff.

"Second—To sell and convey or lease any real or personal estate owned by the county."

This statute is construed by the courts to permit the county to lease its unneeded property only for public purposes. In the case of *Yakley v. Johnson*, 295 Ill. App. 77, the court said at page 80:

"It is the theory of the appellant that a proper construction of these statutes gives to the county board of supervisors the authority to lease a portion of the space in the county court house for a private purpose, and relies almost entirely upon the reasoning of the court in the case of *Hardin v. Sangamon County*, 71 Ill. App. 103. That case did discuss quite fully the functions and powers of the county board with relation to the real estate of the county, and held that the county was a proper party to a suit in forcible entry and detainer instituted for the purpose of acquiring possession of the part of the premises allotted to the county recorder, but used by a private abstract company. We do not find in that opinion any language which holds that the county board has general power to make a lease of any room or space in the court house for a private purpose. Our courts have many times defined the nature and duties of a county, and have always held that its duties are public and not private. In the case of *Harris v. Board of Supervisors*, 105 Ill. 445, the court said: '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 invested with the title, to be held for the public.' Again in the case of *Hollenbeck v. County of Winnebago*, 95 Ill. 148, it was stated:

'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.'

Since a county has only the rights and privileges granted to it, either by the legislature or by the constitution, we cannot find in the provisions of the statute, or in the adjudicated cases in our Supreme Court that a county has the power, either expressly or by implication, to lease the public property for private purposes. * * * * *

In answer to your first question, it is my opinion that the county has no authority to lease county owned property to a private corporation for the construction of a dock.

In answer to your second question, it is my opinion that a county cannot lease the unimproved land of the county farm to a private person. In this connection I will direct your attention to my Opinion No. F 1236 found in the printed Opinions for 1964 at page 214 which contains a discussion of this problem.

(No. F-1479—October 26, 1965)

COUNTIES—County zoning—Unzoned municipalities. Where both a municipality and a county enact zoning ordinances applicable to contiguous territory not more than one and one-half miles beyond the corporate limits of the municipality, the county zoning ordinance takes precedence.

COUNTIES—County zoning—Unzoned municipalities. It is now mandatory that a county with a zoning ordinance amend said ordinance to adopt zoning for unzoned