Section 2-13 of the Criminal Code defines "peace officer" as:

"* * * [A]ny person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses." (Ill. Rev. Stat. 1973, ch. 38, par. 2-13.)

Section 107-4(2) of the Criminal Code (Ill. Rev. Stat. 1973, ch. 38, par. 107-4(2)) contains a broader definition of the term, including within its scope:

"* * * [A]ny peace officer or member of any duly organized State, County, or Municipal peace unit or police force of another State." (Ill. Rev. Stat. 1973, ch. 38, par. 107-4(2).)

This definition expressly applies only to article 107 of the Criminal Code dealing with "arrest". Ill. Rev. Stat. 1973, ch. 38, pars. 107-1 *et seq.*

Section 2-18 of the Criminal Code (Ill. Rev. Stat. 1973, ch. 38, par. 2-18) defines "public officer" to mean:

"* * * [A] person who is elected to office pursuant to statute, or who is appointed to an office which is established and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions." (Ill. Rev. Stat. 1973, ch. 38, par. 2-18.)

It is clear from "AN ACT to revise the law in relation to coroners" (Ill. Rev. Stat. 1973, ch. 31, par. 1-26(a)) and "AN ACT allowing coroners to appoint deputies and prescribe their duties" (Ill. Rev. Stat. 1973, ch. 31, par. 27-29) that they are "public officers" within the language quoted above.

Among the statutory duties and responsibilities of the coroner are the following:

"§6. Each coroner shall be conservator of the peace in his county, and, in the performance of his duties as such, shall have the same powers as the sheriff." (Ill. Rev. Stat. 1973, ch. 31, par. 6.)

"Each sheriff shall be conservator of the peace in his county, and shall keep the same, suppress riots, routs, affrays, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination." (Ill. Rev. Stat. 1973, ch. 125, par. 17.)

"§7. When it appears from the papers in a case that the sheriff or his deputy is a party thereto, or from affidavit filed that he is interested therein, or is of kin, or partial to or prejudiced against either party, the summons, execution or other process may be directed to the coroner, who shall perform all the duties in relation thereto, and attend to the suit in like manner as if he were sheriff; * * *" (Ill. Rev. Stat. 1973, ch. 31, par. 7; *Greenup* v. *Stoker*, 12 Ill. 24, (1850), 52 Am. Dec. 474.)

"§9. Where the office of the sheriff is vacant, the coroner of the county shall perform all the duties required by law to be performed by the sheriff, and have the same powers, and be liable to the same penalties and proceedings as if he were sheriff, until another sheriff is elected or appointed and qualified." (Ill. Rev. Stat. 1973, ch. 31, par. 9.)

§23. If a person implicated by the inquest as the unlawful slayer of the deceased or an accessory thereto is not in custody therefor, the coroner acting upon the signed verdict of his jury shall, in his capacity as conservator of the peace, apprehend such person and immediately bring him before a judge of the circuit court of his county to be dealt with according to law on a criminal charge preferred on the basis of such verdict." (Ill. Rev. Stat. 1973, ch. 31, par. 24.)

"§3. Deputy coroners, duly appointed and qualified, may perform any and all the duties of the coroner in the name of the coroner, and the acts of such deputies shall be held to be acts of the coroner." (Ill. Rev. Stat. 1973, ch. 31, par. 29.)

"§1. When the fact that a felony has been committed shall come to the knowledge of any sheriff or coroner, fresh pursuit shall be forthwith made after every person guilty thereof, by such sheriff, coroner, and all other persons who shall be by any one of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises shall be guilty of a Class B misdemeanor." (Ill. Rev. Stat. 1973, ch. 125, par. 81.)

"§2. It shall be the duty of every sheriff, coroner, and every marshal, policeman, or other officer of any incorporated city, town or village, having the power of a sheriff, when any criminal offense or breach of the peace is committed or attempted in his presence, forthwith to apprehend the offender and bring him before some judge, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and without delay to serve and execute all warrants, writs, precepts and other process to him lawfully directed." (Ill. Rev. Stat. 1973, ch. 125, par. 82; *People* v. *Nellis*, 294 Ill. 12 (1911), 94 N.E. 165.)

Based upon these statutory duties, it is clear that a coroner or deputy coroner is a "peace officer" within the meaning of each of its definitions. (Ill. Rev. Stat. 1973, ch. 38, par. 2-13 and 107-4(2).) As such each is entitled only to the six express exemptions of section 24-2 of the Criminal Code (Ill. Rev. Stat. 1973, ch. 38, par. 24-2) from prosecution for the otherwise unlawful use of weapons as set forth in subsections (3), (4), (7), (8) and (10) of section 24-1(a) (Ill. Rev. Stat. 1973, ch. 38, pars. 24-1(a), sub-pars. (3), (4), (7), (8) and (10)) and, as limited in section 24-2(d) (Ill. Rev. Stat. 1973, ch. 38, par. 24-2(d)) from prosecution under section 24-1(a)(1). Ill. Rev. Stat. 1973, ch. 38, par. 24-1(a)(1).

(No. S-825—October 31, 1974)

COUNTIES: *Public Purpose—Lease of Real Estate to Doctors.* County real estate may be leased to physicians who will locate their private offices upon it.

STATUTES CONSTRUED: Illinois Revised Statutes 1973, chapter 34, paragraph 303; chapter 85, paragraphs 921 *et seq.*

Hon. Richard S. Simpson, State's Attorney, Lawrence County, Courthouse, Lawrenceville, Illinois.

This is to acknowledge receipt of your letter in which you request an answer to the following question:

"May the Lawrence County Memorial Hospital enter into a long term lease with two doctors, or possibly more, of part of the Real Estate adjoining its building, or nearby, for the doctors to build their own offices?"

You have stated that Lawrence County owns the Lawrence County Memorial Hospital and that the real estate on which the

hospital building is situated was deeded to the hospital for hospital purposes. Subsequent to the receipt of your letter, I was informed by Mr. William Hensley, County Clerk of Lawrence County, that the real estate to which you refer was deeded to the County of Lawrence in fee simple without restrictions or limitations on the use of the land in separate parcels or tracts during a period from August to November, 1945. I further assume that the real estate is not needed for county purposes.

Section 24 of "AN ACT in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 303) provides in part:

"Each county shall have power—

* * *

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

* * * "

In *Yakley* v. *Johnson*, 295 Ill. App. 77, the county board leased space in the courthouse to a private abstract company. An injunction was sought by the company to prevent the sheriff from forcibly removing the company. Although the case involved a specific statute that permitted the county board to lease unneeded space in the courthouse to certain specified public lessees, the 3rd District Appellate Court held that, in general, a county could not lease public property for private purposes. This principle has been repeated in several Attorney General's opinions. (See, for example, 1949 Ill. Att'y. Gen. Op. 251; 1962 Ill. Att'y Gen. Op. 328; 1964 Ill. Att'y. Gen. Op. 214; 1965 Ill. Att'y. Gen. Op. 176; Ill. Att'y Gen. Op. S-11, March 4, 1969.) The principle that public property cannot be used for private purposes has been codified in section 1(a) of article VIII of the Illinois Constitution of 1970 which provides: "Public funds, property or credit shall be used only for public purposes".

In the introduction of the Finance Article to the floor of the Convention, Delegate Karns made it clear that this section was intended to deal generally with the responsibilities and duties of both State and local governments. II Record of Proceedings 869.

With reference to this specific sentence of section 1, Delegate Cicero stated:

"The first sentence of this section is intended explicitly to reaffirm the general rule that public monies cannot be taken or applied for private purposes but can only be applied to public purposes. Indeed, there are many holdings in this state and others that affirm that general rule and provide that to use public monies for private purposes is a violation of due process.

This section is also intended to remove any question concerning any continued life of article IV, section 20, if it contravenes the principle that I have just outlined. Article IV, section 20, provides that the state shall never pay, assume, or become responsible for the debts or liabilities or loan its credit to or in aid of any public or other corporation. In practice, this section has been interpreted to allow the state to extend its credit, use its monies, so long as the use was being extended for a public purpose. In other words, it has been interpreted as meaning the same thing as I outlined we intend this sentence to mean. We intend this provision to allow the state's credit to be used to guarantee debts of local governments, for example, to allow the state to enter into arrangements with development corporations, other types of non-governmental corporations, so long as public purposes are served thereby.

It is the feeling of the committee that in the age we live in many of these types of enterprises are going to be undertaken, as they are at the present time, through various types of ventures—cooperative ventures—between non-governmental corporations and state or local governments; and this is intended to allow that type of thing so long as a public purpose is served." (II Record of Proceedings 869.)

In answer to a question as to whether this section would authorize a local governmental unit to issue bonds to provide facilities for a private manufacturing enterprise, Delegate Cicero stated:

"* * * This section does not confer such authority; but in the event such authority is conferred elsewhere, this section would provide a test or a standard by which any such authority or any such expenditures or credit extensions must be tested." (II Record of Proceedings 870.)

In light of the statutory power of the county to lease property, your county may lease the subject real property so long as a public purpose is served. The issue is, therefore, narrowed to a determination of what constitutes a public purpose.

"Public purpose" is an elusive term which is difficult to define. As was stated by the Illinois Supreme Court in *People ex rel. Adamowski* v. *The Chicago R.R. Terminal Authority*, 14 Ill. 2d 230, 236:

"Public purpose is not a static concept. It is flexible, and is capable of expansion to meet conditions of a complex society that were not within the contemplation of the framers of our Constitution." (See, also, *Sommers* v. *Flint*, (Mich.) 96 N.W. 2d 119.)

16 McQuillin, Municipal Corporation, §44.35, page 97, states:

"It is not possible to lay down any hard-and-fast rule by which to determine which purposes are public and which private. Hardly any project of public benefit is without some element of peculiar personal profit to individuals, hardly any private attempt to use the taxing power is without some colorable pretext of public good. Each case must be judged on its own facts, and any attempt at fixed definition must result in confusion and contradictions."

It has been repeatedly held that if the principle purpose and object is public in nature, it matters not that there is an incidental benefit to private interests. *People ex rel. City of Salem* v. *McMackin*, 53 Ill. 2d 347; *People ex rel. Adamowski* v. *Chicago R.R. Terminal Authority*, *supra*; *People ex rel. Gutknecht* v. *The City of Chicago*, 414 Ill. 600; *Cremer* v. *Peoria Housing Authority*, 399 Ill. 579.

It has been variably stated that a public purpose means "a purpose approved and authorized by law" (*Frohmiller* v. *The Bd. of Regents*, (Ariz.) 171 P. 2d 356) which has as its objective the promotion of public health, safety, morals, security, prosperity, content-

ment, and general welfare of all of the inhabitants (*Clifford* v. *The City of Cheyenne*, (Wyo.), 487 P. 2d 1325; *United Community Service* v. *Omaha Nat'l. Bank*, 162 Neb. 786, 77 N.W. 2d 576; *Lott* v. *The City of Orlando*, 142 Fla. 338, 196 So. 313); a purpose or use necessarily for the common good and welfare of the people of the municipality (*Kearney* v. *The City of Schenectady*, 325 N.Y.S. 2d 278), which confers direct public benefit of a reasonably general character as distinguished from a removed or theoretical benefit (Opinion of the Justices to the House of Representatives, (Mass.) 197 N.E. 2d 691); and which not only serves to benefit the community as a whole but is also directly related to the functions of government. *Roe* v. *Kervick*, 42 N.J. 191, 199 A.2d 834; *Port Authority of the City of St. Paul* v. *Fisher*, 269 Minn. 276, 132 N.W. 2d 183.

It has also been repeatedly held that what is a public purpose is a question within the discretion of the legislature in the first instance. Its determinations are entitled to great consideration and the courts are not warranted in setting aside its enactment unless it is clearly evasive of, or contrary to, constitutional limitations. *Cremer* v. *Peoria Housing Authority*, *supra*; *People* v. *Chicago Transit Authority*, 392 Ill. 77.

Relevant to the question presented herein is the Medical Service Facility Act (Ill. Rev. Stat. 1973, ch. 85, pars. 921 *et seq.*), which grants to counties, cities, villages, and incorporated towns the power to acquire, erect, and maintain a medical service facility and lease space therein to doctors. Section 3 of the same Act provides:

> "The purpose of this Act is to enable local governmental units to serve the needs of the public more effectively in the several communities of this State in which the health and welfare of the people are in danger by the lack of adequate medical service by providing medical service facilities for lease in order to make settlement in the community more attractive to doctors." (Ill. Rev. Stat. 1973, ch. 85, par. 923.)

A legislative enactment is presumed to be constitutionally valid. (*Livingston* v. *Ogilvie*, 43 Ill. 2d 9.) Therefore, the public purpose sought to be met by the above statute must be presumed valid or such act must be held unconstitutional. It would, therefore, follow that the fundamental purpose sought to be achieved by the Act, i.e. providing medical facilities to doctors in the community, is a valid public purpose. Consequently, where the real estate in question is to be leased by the county for the same purpose as that expressed in the Medical Service Facility Act, it must be assumed that such purpose is likewise a proper public purpose.

From the foregoing, it is my opinion that a lease by the county of the subject real estate to doctors on which will be built private doctor's offices is a lease for public purpose.

I would like to emphasize that there are additional factors which you may consider in connection with a lease of the type you have described.

One such factor involves the length of the term of the lease. In a recent opinion, S-797, issued August 13, 1974, I held that a county may not enter into a lease for governmental purposes if the term of the lease extends beyond the life of the present county board, except where, for administrative purposes, it becomes necessary to extend for a short period, or where the county must of necessity enter into the lease agreement and the lease cannot be reasonably executed without exceeding the term of the county board. As an aid in determining whether the lease may bind successor county boards, I set out five criteria in the opinion to which I refer you. It should be noted that whether the county is exercising a proprietary or governmental power is a question which can only be settled upon the facts of the particular case. See, *City of Waco* v. *Thompson*, (Texas) 127 S.W. 2d 223.

An additional factor which you must consider is the amount of the rental which will be charged by the county. The county is under a duty to lease the land for adequate consideration. See, Ill. Att'y. Gen. Op. S-691, issued January 30, 1974.

Finally, since the county holds the property in trust for the benefit of the inhabitants of the county (*Sherlock* v. *Village of Winnetka*, 59 Ill. 389), the county board should consider what limitations or restrictions should be appended to the lease so as to insure that the property will be used for a public purpose.

(No. S-826—October 31, 1974)

FEES AND SALARIES: *Sheriff's Fee for Committing Prisoners to Jail.* Sheriff's fee for committing prisoners to jail may only be assessed by court as part of costs in a given case and said fee must be included in sheriff's report to the county board.

CONSTITUTION CONSTRUED: Illinois Constitution of 1970, article VII, section 9(a).

STATUTES CONSTRUED: Illinois Revised Statutes 1973, chapter 25, paragraph 16; chapter 33, paragraph 25; chapter 53, paragraphs 37 and 69.

Hon. Dayton L. Thomas, State's Attorney, Gallatin County, P. O. Box 412, Shawneetown, Illinois.

I have your letter wherein you state:

> "The Sheriff of Gallatin County and Sheriffs of adjoining counties have been charging a $2.00 fee for each prisoner who makes bail in their county under the appropriate paragraphs in Section 37, Chapter 53, which reads as follows:
>
> 'for committing each prisoner to jail, in each county, $2.00 payable out of county treasury, unless paid by the defendant.'
>
> 1. Can this section be construed to allow the charge of the $2.00 to be made by the Sheriff at the time the prisoner is committed to jail and released on bond or must the fee be assessed by the court after a plea of guilty or a finding of guilty?