



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



February 25, 1992

I - 92-012

COUNTIES:

Leasing of Space in Courthouse

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Honorable Michael J. Herr
State's Attorney, Mercer County
Mercer County Courthouse
Aledo, Illinois 61231

Dear Mr. Herr:

I have your letter wherein you inquire regarding the propriety of leasing space in the county courthouse for several purposes. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

You have stated that office space in the courthouse has been leased to six groups, including: a Veterans Assistance Commission organized pursuant to the Assistance to Indigent Veterans Act (Ill. Rev. Stat. 1989, ch. 23, par. 3081 et seq.); a general assistance office administered by the Veterans Assistance Commission and funded by ten townships in the county; the Regional Board of School Trustees; the Mercer County Youth Service Bureau, which is organized on a not for profit basis and is funded from both public and private sources; the Mercer County Health Improvement Association, a not for profit private entity which assists persons with medical insurance claims; the Mercer County Title Insurance Company, a sole proprietorship which sells title insurance and

approves submitted plats; and a tax service operated by the circuit clerk, apparently as a private business, for profit.

Sections 5-1005, 5-1015 and 5-17001 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, pars. 5-1005, 5-1015, 5-17001) provide, in pertinent part:

"§ 5-1005. Powers. Each county shall have power:

* * *

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

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"§ 5-1015. Care and custody of property. A county board may take and have the care and custody of all the real and personal estate owned by the county."

"§ 5-17001. Leasing space in court house. Whenever there is space in the county court house not needed for county purposes, the county board may lease such space to the state or any court thereof, to any city, village, town, sanitary district or other municipal corporation for such period of time and upon such terms as may seem just and equitable to the board."

A limitation upon the power of a county to lease county property is found in the constitutional provision that public funds, property and credit may be used only for public purposes. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Ill. Const. 1970, art. VIII, sec. 1(a).) A county has no power to lease any space in the courthouse for a private purpose. (Yakley v. Johnson (1938), 295 Ill. App. 77.) Thus, in Yakley v. Johnson (1938), 295 Ill. App. 77, it was held that a lease of office space in the courthouse to a sole proprietor doing business as an abstract company was beyond the power of the county board. The court upheld the action of the sheriff in removing the business.

In Redmond v. Novak (1981), 86 Ill. 2d 374, however, it was held that a lease of courthouse space to a county election commission was proper. In contrast to the abstract company at issue in Yakley v. Johnson, the commission was a

public entity, which served a public purpose. Therefore, the prohibition upon the use of public property for private purposes was not violated.

Previous opinions of the Attorney General have also addressed the propriety of the lease of county property, concluding that a county may lease space in the county building to a United States congressman for his local office (1976 Ill. Att'y Gen. Op. 117), or for the use of a township board, a township highway commissioner, and a state representative. (1976 Ill. Att'y Gen. Op. 86.)

Each of the leases relating to the Mercer County courthouse should be separately considered in determining its propriety. The Veterans Assistance Commission is a public entity for which the county is required to provide office space. (Ill. Rev. Stat. 1989, ch. 23, par. 3090.) The General Assistance office, operated by the Veterans Assistance Commission and various townships, also clearly serves a public purpose. Therefore, it appears that leases of space to these entities is proper.

The Regional Board of School Trustees is, likewise, a public entity serving a public purpose, to whom space may properly be leased. Based upon your comments, it appears that the Mercer County Youth Service Bureau is an entity supported by the county pursuant to section 5-1089 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1089). If so, the lease of space to it would appear to serve a public purpose and would, therefore, be lawful.

I cannot readily determine, from the information in your letter, whether the lease to the Mercer County Health Improvement Association serves a public purpose. If its primary purpose is the servicing of private health insurers and assisting with the filing of insurance claims on behalf of their insureds, that would appear to be a private purpose. If so, the lease would be improper.

The leases to the title insurance company and to the circuit clerk's private tax service appear to fall squarely within the holding in Yakley v. Johnson. These are private businesses and leases to them do not serve public purposes. The fact that the county uses the title service to approve plats does not alter that result. Business profits inure to the benefit of the owners, not to the public. These two leases, therefore, appear to be ultra vires.

Honorable Michael J. Herr - 4.

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

Very truly yours,

A solid black rectangular redaction box covering the signature of Michael J. Luke.

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Division