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STATE OF ILLINOIS

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I - 92-048

MUNICIPALITIES:
Lease of City Owned Property
For Development of Parking Lot

Honorable Larry Wennlund
State Representative
1234 North Cedar Road
New Lenox, Illinois 60451

Dear Representative Wennlund:

I have your letter wherein you inquire whether the Village of Mokena may lease a parcel of unimproved land owned by the city to a private developer for the development of a parking lot and storm water retention facility on the property. Because of your need for an expedited response, I will comment informally upon the question you raise.

Article 8, section 1(a) of the 1970 Constitution provides:

> "Public funds, property or credit shall be used only for public purposes."

The Supreme Court has held that if the principal purpose and objective of an enactment is public in nature, it does not matter that there will be an incidental benefit to private interests, moreover, the determination of what are public purposes is, in the first instance, a question for the General Assembly. (People ex rel. City of Salem v. McMackin (1972), 53 Ill. 2d 347.) A city's use of its resources for public pur-

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poses is not invalid by reason of the city's collaboration with private developers. People ex rel. City of Urbana v. Paley (1977), 68 Ill. 2d 62.

The General Assembly has authorized municipalities to develop off-street parking facilities, and has specifically authorized cities and villages to enter into contracts for that purpose. (Ill. Rev. Stat. 1991, ch. 24, par. 11-71-1.) Municipalities have been delegated broad authority with respect to the construction and regulation of drainage and sewer systems. (Ill. Rev. Stat. 1991, ch. 24, par. 11-109-1 et seq.) These provisions indicate that there has been a legislative determination that the activities authorized serve public purposes. Indeed, the Supreme Court has specifically determined that the development of off-street parking serves a public purpose. Poole v. City of Kankakee (1950), 406 Ill. 521.

Moreover, the village has express authority to lease real estate which it holds and which is not needed for municipal purposes. (Ill. Rev. Stat. 1991, ch. 24, par. 11-76-1.) Identical language was construed, in Center v. City of Benton (1953), 414 Ill. 107, as authorizing the city to lease a portion of a tract which it had purchased to a private party for development of a drive-in theater.

Article 8, section 1(a) of the constitution prohibits a municipality from permitting the private, commercial use of its property when there is no public benefit. (O'Fallon Development v. City of O'Fallon (1979), 71 Ill. App. 3d 220.) In accordance with the authorities cited above, however, it is clear that the constitution does not prohibit a municipality from collaborating with private entities to carry out an authorized public purpose. Because the village of Mokena is expressly authorized to develop off-street parking and storm water retention facilities, it appears that it may do so by leasing property to a private developer for those purposes.

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

Very truly yours,

[redacted]

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

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