



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



December 8, 1992

I - 92-058

SPECIAL DISTRICTS:
Economic Development by
River Conservancy District

Honorable Terry M. Green
State's Attorney, Franklin County
202 West Main Street
Benton, Illinois 62812

Dear Mr. Green:

I have your letter wherein you inquire whether the Rend Lake Conservancy District may lease land which it owns: (1) to a private industrial developer at a nominal rate; or (2) to a private developer for the purpose of constructing golf courses, condominiums or homes that would not be available to the general public. 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.

The Rend Lake Conservancy District is a river conservancy district organized pursuant to the River Conservancy Districts Act (Ill. Rev. Stat. 1991, ch. 42, par. 383 et seq.). The District operates a water plant and distribution system, as well as a golf course, restaurant and associated businesses. In addition to its current operations, the District owns approximately 2,500 acres of land which are suitable for development and concerning which it has begun negotiations with private developers.

Sections 9b and 11 of the River Conservancy Districts Act (Ill. Rev. Stat. 1991, ch. 42, pars. 392a, 394) empower districts to engage in various development activities. In addition to authorizing districts to develop and operate facilities for drainage, water supply and wastewater treatment, the sections further provide:

"§ 9b. The board of trustees of any conservancy district shall in addition to the other powers and duties by this Act conferred and imposed have the following powers and duties:

* * *

(d) The board shall have the power, if it shall find it conducive to the public health, comfort or convenience to acquire sufficient lands contiguous to its reservoir or reservoirs for the establishment of recreational grounds and the right to permit such reservoir or reservoirs to be used for recreational purposes and to construct on such grounds a building or buildings and other improvements for such recreational purposes; provided however, that nothing in this paragraph contained shall in any way interfere with the drainage or other use of such reservoir or reservoirs for the purpose of controlling, regulating and augmenting the flow of rivers, streams or water courses of the District.

* * *

"

"§11. (1) The board of trustees of a conservancy district incorporated under this Act may acquire, by gift, purchase or lease, land or any of the facilities enumerated below, and may construct, develop, operate, extend and improve such facilities:

* * *

(c) Lodges, cottages, trailer courts, and camping grounds, marinas and related facilities for the accommodation and servicing of boats, tennis courts, swimming pools, golf courses, skating rinks, skeet ranges, playgrounds, stables, bridle paths, and athletic

fields, picnic grounds and parking areas, convention and entertainment centers, and other related buildings and facilities for the accommodation and recreation of persons visiting the reservoirs owned by the district or from which it is drawing a supply of water. Any such facilities, when acquired, may be leased by the board to a responsible person, firm, or corporation for operation over a period not longer than 20 years from the date of the lease, or the board may lease, for a period not longer than 50 years from the date of the lease, land to a responsible person, firm, or corporation for development for any of the foregoing recreational purposes and may grant to such person, firm or corporation the right, at the option of the person, firm or corporation, to extend the lease for a period not longer than 50 years from the expiration of the original lease. If the board determines to operate any such recreational facilities, it shall establish for the revenue-producing facilities rates and charges which at least defray all fixed, maintenance, and operating expenses.

(2) The board of trustees of the Rend Lake Conservancy District may acquire, by gift, purchase or lease, land or facilities specified below, and may construct, develop, operate, extend and improve such facilities:

Industrial projects consisting of one or more buildings and other structures, improvements, machinery and equipment suitable for use by any manufacturing, industrial, research or commercial enterprise and any other improvements necessary or convenient thereto. Any such facilities, when acquired, may be leased for operation for a period not longer than 20 years after the date of the commencement of the lease, or the board may lease, for a period not longer than 50 years after the date of the commencement of the lease, land to a responsible person, firm or corporation for development of any of the foregoing industrial projects and may grant to such person, firm or corporation the right, at the option of the person, firm or

corporation, to extend the lease for a period not longer than 50 years from the date of expiration of the original lease. If the board decides to operate any such industrial projects, it shall establish for the revenue producing facilities rates and charges which will at least defray all fixed, maintenance, and operating expenses. However, nothing in this amendatory Act of 1983 shall permit the Rend Lake Conservancy District to acquire, purchase, lease, construct, develop, operate or extend a facility for the purpose of mining coal.

* * *

(Emphasis added.)

With respect to your first question, subsection 11(2) of the Act clearly authorizes the District to engage in the development of industrial projects and to lease its property for that purpose. When this subsection was added to the Act by Public Act 83-785, effective January 1, 1984, the House sponsor of the measure explained that its purpose was to permit the District to develop an industrial park. (Remarks of Rep. Rea, June 28, 1983, House Debate on House Bill 470, at 199.) Neither in the language of the section nor in the legislative debates relating to its adoption is there any reference to the rate at which such property may be leased.

A limitation on the power of a public entity to lease its property is found in the constitutional provision that public funds, property and credit shall be used only for public purposes. (Ill. Const. 1970, art. VIII, sec. 1(a); Redmond v. Novak (1981), 86 Ill. 2d 374.) If however, the principal purpose and objective of an act is public in nature, it does not matter that there will be an incidental benefit to private interests. (People ex rel. City of Salem v. McMackin (1972), 53 Ill. 2d 347, 355.) It has been held that industrial development related to job creation and the relief of unemployment are public purposes to which public funds and property may properly be allocated. (People ex rel. City of Urbana v. Paley (1977), 68 Ill. 2d 62; Marshall Field & Co. v. Village of South Barrington (1981), 92 Ill. App. 3d 360.) Therefore, it appears that the lease of property by the district for industrial development will serve a public purpose, and is authorized by statute.

As a general principle, a unit of local government may not sell or lease its property for a nominal consideration because that would be tantamount to a gift of the value of the

property. (1974 Ill. Att'y Gen. Op. 64, 66.) Based upon the holding in Cremer v. Peoria Housing Authority (1948), 399 Ill. 579, it appears that the agreement of a developer to develop the property in the manner and for the purposes desired by the District would serve as valid legal consideration for the lease. In Cremer v. Peoria Housing Authority, the housing authority transferred property to a not-for-profit corporation in return for, among other consideration, the corporation's construction and management of low and moderate income housing. The court rejected a claim that the agreement was not supported by adequate consideration, holding that the agreement to construct housing to benefit the public welfare by relieving a housing shortage constituted consideration for the lease. It appears that an undertaking by a developer to relieve unemployment by constructing industrial projects would similarly serve as consideration for the District's lease of property, at a nominal rate, to the developer.

Both statutory authority and public purpose must also be considered with respect to your second question. Subsection 9b(d) of the River Conservancy Districts Act authorizes the District to provide recreational grounds for the public health, comfort or convenience. Subsection 11(c) authorizes the provision of various facilities for the accommodation and recreation of persons visiting the reservoir and the surrounding area. In so providing, the General Assembly has determined that these facilities would serve a public purpose. As you have noted, however, these provisions appear to contemplate facilities which are open to the public and which are available to visitors to the area.

A river conservancy district, like other units of local government which do not possess home rule powers, has only those powers which have been granted to it by the constitution and by statute (Ill. Const. 1970, art. VII, sec. 8), together such implied powers as may be necessary to carry out those express powers. (1 Dillon, Law of Municipal Corporations § 237 at 449 (5th ed. 1911).) Absent a legislative grant of authority to do so (as was cited with respect to your first question), the District cannot lease land for private use, even if a public purpose is arguably to be served. (See opinion No. NP-636, issued October 17, 1973.) The construction of private homes or condominiums for permanent residents, along with recreational facilities which will not be available to persons who visit the District, does not appear to fall within the express authority which has been granted by the Act. Indeed, absent a declaration of legislative intent, it is not at all clear how such construction would serve a public purpose. Therefore, it appears that the District does not possess the authority to undertake such a project.

Honorable Terry M. Green - 6.

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

MJL:KJS:cj