

It is therefore my considered opinion that by virtue of section 4 of chapter 131 there is a continuing application of section 490 as to acts committed prior to its repeal but prosecuted subsequent thereto, so that in this case the defendant is to be governed by the law in effect at the time he committed the crime.

(No. 279—April 17, 1962).

**COUNTIES AND COUNTY BOARDS—Power To Lease County Property For Private Purposes.** Without specific statutory authority, a County cannot lease its property for oil and gas purposes. However, where the County owns the surface as well as the mineral rights, it can sell and convey by a mineral deed the mineral rights.

**STATUTES CONSTRUED—**Illinois Revised Statutes 1961, Chapter 34, Paragraph 303 (2nd).

Hon. Richard Stengel, State's Attorney, Rock Island County, Rock Island.

I have your communication of April 4, 1962, wherein you state as follows:

"The County Board of Rock Island County has received an attractive offer to execute a lease of oil and gas rights as to property owned by the County in connection with the County Home and Farm. A copy of the proposed lease is attached.

"I respectfully request your opinion as to the power of the County Board to enter into such a lease."

In this connection, I direct your attention to Illinois Revised Statutes 1961, Chapter 34, Paragraph 303, relating to the powers of a County, which provides, in part, as follows:

"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. \* \* \*

The above provision appears to give the County the power to sell or lease any real property owned by it. However, the Appellate Court of the Third District, in construing the above statutory provision, in the case of *Yakley v. Johnson*, 295 Ill. App. 77, held as follows:

"\* \* \* 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 that 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. \* \* \*

It is to be noted that the Court held that a county could not lease public property for private purposes.

School officers holding the legal title to school property are specifically authorized by Illinois Revised Statutes 1961, Chapter 122, Paragraph 15-3 to lease school property for oil and gas purposes.

In view of the holding of the Appellate Court in the *Yakley case supra*, and the absence of any specific statutory authority, I am of the opinion that a county cannot lease its property for oil and gas purposes.

However, where the county owns the surface, as well as the mineral rights in property, the county could sell and convey by a mineral deed the mineral rights to such property.

(No. 280—May 7, 1962)

**STATE OFFICERS—Auditor of Public Accounts—Wage Deductions for United Fund.** If an officer or employee of the State of Illinois designates that payment of his wage deduction for United Fund purposes shall be made to the United Fund of Sangamon County as agent for the particular United Fund which he wishes to receive the deductions, and if the latter United Fund authorizes the United Fund of Sangamon County as its agent to receive such wage deductions, warrants for the amounts deducted may be forwarded each pay period to the United Fund of Sangamon County as agent for the recipient fund.

**STATUTES CONSTRUED—**Illinois Revised Statutes 1961, chapter 127, paragraphs 371 and 372.

Hon. Michael J. Howlett, Auditor of Public Accounts Springfield.

I have your letter of March 19, 1962, with proposed Rules and Regulations pertaining to payroll deductions for purposes of the United Fund. Pursuant to my request of March 20, 1962, for additional information, on April 18, 1962, you sent to me a revision of the proposed rules and regulations along with the requested information. A copy of the rules and regulations as revised is as follows:

"1. The United Fund may furnish payroll deduction authorization and revocation cards.

"2. To be eligible for P/R Deductions, an employee may pledge only to a bonafide United Fund. (1) (United Fund means the organization conducting the single, annual, consolidated efforts to secure funds for distribution to agencies en-