(f) A statement, expressed in dollars, of the amount of stated capital, and the amount of paid-in surplus of the corporation after giving effect to such change.

* * *

Such report shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by the corporation by its president or a vice-president, and verified by him, and the corporate seal shall be thereunto affixed, attested by its secretary or an assistant secretary, and delivered to the Secretary of State. Upon receipt thereof he shall examine the same, and if he finds that it conforms to the provisions of this Act, he shall, when all franchise taxes, fees, and charges have been paid as in this Act prescribed, endorse thereon the word 'Filed,' and the month, day, and year of the filing thereof, and thereupon file the same in his office." (Emphasis added.)

Statutory language should be given its plain and commonly accepted meaning. (*People* v. *McCoy* (1976), 63 Ill. 2d 40, 45.) Applying the plain meaning of the words contained therein to the underscored portion of section 119, one can see clearly that changes in stated capital or paid-in surplus may be effected in any way permitted by the State or country of incorporation and that Illinois procedures need not be followed. Therefore, a report reflecting a reduction in paid-in surplus properly accomplished in a manner permitted by the State or country of incorporation should be accepted and filed by the Secretary of State, and the franchise taxes should be computed on the reduced figure.

You mention in your letter the definition of paid-in surplus contained in section 2-12 of the Act (Ill. Rev. Stat. 1975, ch. 32, par. 157.2-12) and inquire whether that language constitutes a basis for requiring foreign corporations to comply with section 60a. The language of section 2-12 to which you direct my attention is the following:

"* * * Irrespective of the manner of designation thereof by the laws under which a foreign corporation is or may be organized, the paid-in surplus of a foreign corporation shall be determined on the same basis and in the same manner as paid-in surplus of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges imposed by this Act."

The above language is directed to assets still held by the corporation which might in some manner be disguised under the laws of the State or country of incorporation but would be considered paid-in surplus under Illinois law. This language does not control the manner in which the paid-in surplus of a foreign corporation can be reduced, and therefore, section 60a does not apply.

Since the General Assembly is presumed not to have intended an absurdity or injustice, the construction of the pertinent provisions contained herein is mandated. (*Halberstadt* v. *Harris Trust & Savings Bank* (1973), 55 Ill. 2d 121, 128.) In the situation which you have presented, corporation A, a Delaware corporation having a certificate of authority to transact business in Illinois, had a paid-in surplus of approximately $200,000,000. In December of 1975, corporation B, a subsidiary of corporation A, was formed in Delaware and granted a certificate of authority to transact business in Illinois. Approximately $84,000,000 out of the paid-in surplus of corporation A was "spun-off" to corporation B.

The aforementioned "spin-off" was permissible under Delaware law and resulted in the reduction of the paid-in surplus of corporation A to approximately $116,000,000. Corporation B paid franchise taxes based upon its $84,000,000 paid-in surplus. A refusal to accept a section 119 report from corporation A and a requirement that said corporation pay franchise taxes on its former paid-in surplus figure of $200,000,000 because it did not reduce its paid-in surplus in accordance with section 60a would result in double taxation on $84,000,000 in paid-in surplus. The result would be unjust and, therefore, a construction which produces this result cannot be presumed to be the one intended by the General Assembly.

(No. S-1288—August 18, 1977)

COUNTIES: *Lease of a County Building to a Not-For-Profit Corporation for Public Purposes.* The leasing of a county-owned building to a not-for-profit corporation for the purpose of providing dormitory facilities for a junior college is a use of public property for a public purpose and therefore not in contravention of section 1(a) of article VIII of the Illinois Constitution.

CONSTITUTION CONSTRUED: Illinois Constitution of 1970, article VIII, section 1(a).

STATUTES CONSTRUED: Illinois Revised Statutes 1975, chapter 34, paragraph 303; chapter 122, paragraph 103-37.

Hon. C. Michael Witters, State's Attorney, Wabash County, Mt. Carmel, Illinois.

I have your letter wherein you request my opinion on the following question:

Does the leasing of a county building for nominal consideration to the Wabash Valley College Foundation, a not-for-profit corporation, for the sole purpose of providing dormitory space to students of Wabash Valley College, constitute a lease of public property for private purposes in contravention to section 1(a) of article VIII of the Illinois Constitution?

Section 1(a) of article VIII of the Illinois Constitution of 1970 states:

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

In addition to this constitutional mandate courts have repeatedly held that the use of public money for private purposes is a violation of due process. *People ex rel. Greening* v. *Bartholf* (1944), 388 Ill. 445, 449; *Winter* v. *Barrett* (1933), 352 Ill. 441, 468; *Chicago Motor Club* v. *Kinney* (1928), 329 Ill. 120, 130.

It is not who receives the money or property, but rather the purpose of the use, which is dispositive of its constitutional validity. Thus, even though private interests may benefit indirectly from a sale, lease, or conveyance of public land, the transaction is nevertheless valid if done for a public purpose. *People ex rel. City of Salem* v. *McMackin* (1972), 53 Ill.

2d 347, 355; *People ex. rel. Adamowski* v. *Chicago Railroad Terminal Authority* (1958), 14 Ill. 2d 230, 236; *People ex rel. Gutknetc* v. *City of Chicago* (1953), 414 Ill. 600, 611-612.

It is clear from the debates of the Sixth Illinois Constitutional Convention that section 1(a) of article VIII was not intended to change the previous corresponding constitutional provisions as they had been interpreted and applied by the courts. Therefore, pursuant to that court interpretation, transactions can be made between units of government and non-governmental corporations or entities as long as a public purpose is served thereby. (II Record of Proceedings 869.) Also, the section is not intended to be an independent grant of power. It merely provides a mandatory test for otherwise authorized transactions. II Record of Proceedings, 870, 872.

Opinion No. S-825 (1974 Ill. Att'y. Gen. Op. 297) dealt with a question similar to the one posed here. A county-owned hospital planned to lease ground adjacent to the hospital to private physicians for the construction of their offices. It was my opinion that even though there would be incidental benefit to the physicians, a public purpose was being served by locating the offices near the hospital. In opinion No. NP-844, I advised that a lease of a portion of a county nursing home to a not-for-profit child day care center would be a public purpose.

The ultimate question is whether the use of public funds or property is for a public purpose. The concept of public purpose is an elastic concept capable of exceptions to meet changing conditions. (*The People* v. *Chicago Transit Authority* (1945), 392 Ill. 77, 86.) Normally, it is for the General Assembly to decide what is for public good and what are public purposes, and the courts regard such decisions with great respect. *The People* v. *Chicago Transit Authority* (1945), 392 Ill. 77, 86.

The public purpose of education is enshrined in article X of the Illinois Constitution:

"A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. * * *"

The construction of dormitories has been approved for the use of tax revenue in section 1 of the Board of Governors of State Colleges and Universities Revenue Bond Act (Ill. Rev. Stat. 1975, ch. 144, par. 1011) as follows:

"The Board of Governors of State Colleges and Universities or its successor is hereby authorized to:

(a) Acquire by purchase or otherwise, construct, equip, complete, remodel, operate, control, and manage student residence halls, dormitories, dining halls, student union buildings, field houses, stadiums, and any other revenue-producing buildings of such type and character as the Board or its successor shall from time to time find a necessity therefor exists and as may be required for the good and benefit of any of the State Colleges or State Universities under its jurisdiction and for that purpose may acquire property of any and every kind and description, whether real, personal or mixed, by gift, purchase or otherwise;

* * *"

The powers of a community college district board do not specifically include building or providing dormitory accommodations. But an explicit grant is not a prerequisite for the existence of the power. Section 3-30 of the Public Community College Act (Ill. Rev. Stat. 1975, ch. 122, par. 103-30) negates a restrictive reading of the enumerated powers:

"The board of any community college district has the powers enumerated in Sections 3-31 through 3-43. This enumeration of powers is not exclusive but the board may exercise all other powers, not inconsistent with this Act, that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board."

Providing dormitory accommodations is one way to aid students in taking advantage of community college educational programs. The presence of such accommodations may in some cases make attendance at a community college possible for some who would otherwise not be able to attend due to lack of adequate transportation. It is clear that the existence of residential facilities would serve a valid public purpose and would be in the interest of the county as well. This public purpose is served whether done directly by the community college board or indirectly through a not-for-profit foundation.

From the foregoing it is my opinion that a lease by the county of the building in question to the Wabash Valley College Foundation for the purpose of providing dormitory facilities for students at Wabash Valley Junior College would be a lease of public property for a public purpose and therefore not in contravention of section 1(a) of article VIII of the Illinois State Constitution.

Although the county has no explicit authority to provide aid directly to community college districts or indirectly through a college foundation, section 2 of The County Home Act (Ill. Rev. Stat. 1975, ch. 34, par. 5362) provides that:

"

* * *

9. Upon the vote of a two-thirds majority of all the members of the [county] board, to sell, dispose of or lease for any term, any part of the home properties in such manner and upon such terms as it deems best for the interest of the county, and to make and execute all necessary conveyances thereof in the same manner as other conveyances of real estate may be made by a county.

* * *

"

I also refer you to previous opinion Nos. S-691 and S-797 (1974 Ill. Att'y. Gen. Ops. 64 and 227) which discuss the terms and consideration required for the leasing of county property. Leasing must be for an adequate consideration.