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FILE NO. NP-843

COUNTIES:

Real Estate - Lease of Public
Property for Purpose of Private
Farming Operation

Honorable William E. Sisler
State's Attorney, Stephenson County
Room 302, Postoffice Building
Freeport, Illinois 61032

Dear Mr. Sisler:

I have your letter wherein you state:

"The County of Stephenson owns real estate in the county suitable for farming, which property, in the past, has been leased to a private individual for farming for an annual cash rental.

The County Board has been advised by the undersigned of previous Attorney General's Opinions (F1236, 1964 A.G. Reports 214; F1478, 1965 A.G. Reports 176, and F1926, 1968 A.G. Reports 34) and case law covering this situation.

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Honorable William E. Sisler - 2.

The County Board has directed me to request an opinion from you on the following question:

Can the county lease real estate owned by it to a private individual to be used by such individual for a private farming operation for an annual cash rental paid to the county?"

The answer to your question is in the negative. Counties are authorized to lease their property by section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 303, as amended by Public Act 78-452, sec. 1), which provides in part as follows:

"§ 24. 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.

* * * "

As noted in previous Attorney General's opinions (F-1236, 1964 Op. Atty. Gen., 214; F-1478, 1965 Op. Atty. Gen., 176; F-1926, 1968 Op. Atty. Gen., 34), counties may not lease public property for private purposes. Consequently, a county may not lease out farm land to a private party for private use on an annual cash rental basis.

Honorable William E. Sisler - 3.

Section 1(a) of article VIII of the Illinois Constitution provides that "Public funds, property, or credit shall be used only for public purposes." This section reaffirms the rule applied in Illinois since Yakley v. Johnson, 295 Ill. App. 77, that counties are not empowered to lease public property for private purposes. As the court noted in its opinion in Yakley:

"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 the 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.

* * *

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.

* * * "

295 Ill. App. 80, 81.

Honorable William E. Sisler - 4.

This position was emphasized during the introduction of the finance article onto the floor of the convention where delegate Cicero stated that:

"The first sentence of this section is intended explicitly to reaffirm the general rule that public monies cannot be taken or applied for private purposes but can only be applied to public purposes. Indeed, there are many holdings in this state and others that affirm that general rule and provide that to use public monies for private purposes is a violation of due process."

II, 6th Ill. Const. Conv.,
Record of Proceedings, 869.

From the foregoing it is my opinion that a county may not lease real estate owned by it and held in public trust to a private individual to be used by such individual for a private farming operation on an annual cash rental basis.

Very truly yours,

A T T O R N E Y G E N E R A L