

commissioners will establish a counting station for all precincts coming under its jurisdiction.

(No. F-1236—August 4, 1964)

**COUNTIES AND COUNTY BOARDS—Power to Lease Unimproved County Farm Land to Private Individual.** A county cannot lease the unimproved land of the County Farm to a private person. Any income earned from the operation of the County Farm is not restricted in its use.

**STATUTES CONSTRUED—**Illinois Revised Statutes 1963, Chapter 34, Paragraph 303.

*Hon. L. E. Ellison, State's Attorney, Whiteside County, Sterling:*

I have your communication of recent date wherein you request my opinion upon the following questions:

"1. May the County Board lease the County Farm (exclusive of buildings which are used to house inmates) to a private individual for an annual cash rental?"

"2. If so, may the income from the cash rental be used for general county purposes or must it be earmarked and used in some particular way?"

"3. If it is not possible to lease the portion of the farm not needed for the housing of inmates, must the income from the operation of the farm by the board be spent for matters connected with the farm only or may this money be spent for general county purposes?"

In answer to your first and second questions, I direct your attention to Illinois Revised Statutes 1963, 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.

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You will note that the county does have the power to lease.

In the case of *Yakley v. Johnson*, 295 Ill. App. 77, the court had occasion to construe the above statutory provision and held as follows:

"It is the theory of the appellant that a proper construction of these statutes gives to the county board of supervisors the authority to lease a portion of the space in the county court house for a private purpose, and relies almost entirely upon the reasoning of the court in the case of *Hardin v. Sangamon County*, 71 Ill. App. 103. That case did discuss quite fully the functions and powers of the county board with relation to the real estate of the county, and held that the county was a proper party to a suit in forcible entry and detainer instituted for the purpose of acquiring possession of the part of the premises allotted to the county recorder, but used by a private abstract company. We do not find in that opinion any language which holds that the county board has general power to make a lease of any room or space in the court house for a private purpose. 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 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.' 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. \* \* \*"

There is also an annotation in A.L.R. 133, page 1242, which sets forth the general rule that a municipal corporation has no power to rent to private persons municipal property which it holds for a public use in the absence of a statutory enactment expressly empowering it to do so. The *Yakley* case is cited in the annotation.

I have heretofore held that a county cannot lease public property for private purposes. Attorney General's Opinions 1962, page 328. See also Attorney General's Opinions 1949, page 251, to the same effect.

Based upon the above, it is my opinion that a county cannot lease the unimproved land of the County Farm to a private person.

Lastly, I have examined Illinois Revised Statutes 1963, Chapter 23, Paragraph 417, relating to a County Farm, and find nothing therein that would restrict the use of any income earned from the operation of the Farm.

(No. F-1238—August 7, 1964)

**ELECTIONS—Counting Representative At-Large Ballots—Tally Sheets.** In counting the representative ballots in the at-large election, it is proper under the statute in cases where a voter has placed a cross (X) in the circle of a political party and then marks for candidates on another political party ticket, to count such party circle votes in a numerical total and for a separate column on the tally sheet to show such total and only enter separate tally marks for the candidates on the other ticket which have a cross (X) before their name. It is also permissible to use a clear plastic double negative over-lay which is in identical form as the ballot, with numbers for each candidate thereon, the corresponding numbers on the tally sheet to aid the tally judges in making an accurate and quicker counting of the ballots. Such aids will relieve eyestrain of the tally judges and could result in a saving to the State of additional per diem compensation.

Where a vacancy occurs in the nomination of Representative in the General Assembly, the person appointed by the State Central Committee of the political party to fill the vacancy will occupy the same place or position on the ballot as the candidate who created the vacancy. The reason for this is that a vacancy could occur after the printing of the ballots and in such a case it would be neces-