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SPRINGFIELD

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FILE NO. S-1109

ZONING:
Dwellings on Agri-
cultural Lands

Honorable Dallas C. Ingemunson
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Dear Mr. Ingemunson:

This responds to your letter in which you ask whether Kendall County has authority to require permits and charge fees for such permits for dwellings situated on land zoned for agricultural purposes. It is my understanding that you are concerned only with dwellings on such land occupied by persons not engaged in agriculture.

Section 1 of "AN ACT in relation to county zoning"
(hereinafter the County Zoning Act) (Ill. Rev. Stat. 1975,

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ch. 34, par. 3151), after setting out the purposes of the Act and the county's power to control buildings and land usage, states in pertinent part:

" * * * Provided, that permits with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes shall be issued free of any charge. * * *

The powers by this Act given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted; nor shall they be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that such buildings or structures for agricultural purposes may be required to conform to building or setback lines; * * * "

As your letter indicates, the answer to your question depends on whether the dwellings are "buildings or structures used or to be used for agricultural purposes" within the meaning of section 1 of the County Zoning Act.

The applicability of the agricultural exception in section 1 to dwellings located on land zoned for agricultural purposes has been discussed in People v. Husler, 34 Ill. App.

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3d 977. The defendant in that case was prosecuted for violation of a county ordinance which prohibited permanently parking mobile homes and using them for dwelling purposes on land other than land in trailer parks. The defendant, citing section 1 of the County Zoning Act, contended that because his property was zoned for agricultural purposes, the county lacked authority to prohibit the use of a mobile home on his property. In rejecting the defendant's contention, the court stated at page 979:

" * * *
Defendant's reliance on this statute is misplaced for, as the statute makes clear, the county's power to require permits for buildings on agricultural land is only prohibited when the buildings are used for agricultural purposes. In this case, defendant's use of his trailer was residential in nature and, thus, the statute is applicable.

* * *

The court determined that the dwelling in that case was used for residential purposes and not for agricultural purposes, but the facts from which the court made this determination are not set forth in the opinion. Thus, it cannot be determined from a reading of the case how broadly the court's statement should be read. Even if the statement is given

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its narrowest meaning, however, it answers the question you have asked. Clearly the statement can be read to hold that where a dwelling, even though situated on land zoned for agricultural purposes, is used only for residential purposes by persons not engaged in agriculture the county has authority to require a permit.

As I stated at the outset, it is my understanding that the dwellings about which you are inquiring are occupied by persons not engaged in agriculture. It is my further understanding that the dwellings are being used solely for residential purposes and not for agricultural purposes. If that is the case, it is my opinion that Kendall County has authority to require permits for the erection, maintenance, repair, alteration, remodeling or extension of such dwellings. Whether such dwellings are in fact occupied by persons not engaged in agriculture and used only for residential purposes and not for agricultural purposes is a question of fact to be determined by you in each case.

You have also asked whether a fee can be charged for such permits. Section 1 requires that permits be issued

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free of charge when the building or structure is used or to be used for agricultural purposes. The language is exactly the same as that used in the sentence prohibiting counties from requiring permits for agricultural buildings. Hence, the discussion above also applies to the county's authority to charge a fee for a permit. Therefore, it is my opinion that where a dwelling on land zoned for agricultural purposes is occupied by a person not engaged in agriculture and used only for residential purposes and not for agricultural purposes, a fee may be charged by the county for the issuance of a permit to erect, maintain, repair, alter, remodel or extend the dwelling.

This opinion is not to be construed as a comment on whether a county may require a permit for or charge a fee for permits for dwellings situated upon land zoned for agricultural purposes which are occupied by persons engaged in agriculture or which are used for agricultural purposes as well as dwelling purposes.

Very truly yours,

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