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HOME RULE:
Power of a Home Rule
Municipality to Levy Taxes
in Excess of Statutory Limit

Honorable David C. Shapiro
Senate Minority Leader
State House
Springfield, Illinois 62706

Dear Senator Shapiro:

I have your letter wherein you request my opinion on the power of the city of Chicago, a home rule unit, to enact an ordinance which levies a tax for school purposes in excess of the maximum set out in section 34-53 of The School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34-53).

In my opinion, the city of Chicago may validly adopt such an ordinance. Section 34-53 of The School Code provides in part:

"For the purpose of establishing and supporting free schools * * * the board of education and the authorities of such district or city, as the case may be, may levy annually, upon all taxable property of the district or city, a tax for building purposes and the purchase of school grounds * * * at a rate not to exceed

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.45% of the value, as equalized or assessed by the Department of Local Government Affairs for the year in which the levy was made; and may levy annually, upon all taxable property of such district or city, for educational purposes a tax for * * * each fiscal year * * * at a rate of not to exceed 2.11% of the value as equalized or assessed by the Department of Local Government Affairs for the year in which such levy is made; provided that the taxes so levied for building purposes and the purchase of school grounds and for educational purposes, respectively, shall not exceed the estimated amounts of taxes to be levied for such year for such purposes * * *."

The statutory limit on tax levies for school purposes was originally enacted in 1909 (Laws of Illinois 1909, p. 342).

Article VII, section 6(a) of the Illinois Constitution of 1970 provides in part:

" * * * Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."

The Illinois Supreme Court has repeatedly held that where statutes which were passed before the adoption of the 1970 Illinois Constitution conflict with ordinances adopted by a home rule municipality, the ordinance will prevail if the subject matter pertains to the municipality's local governmental affairs. (City of Rockford v. Gill (1979), 75 Ill. 2d 334; Stryker v. Village of Oak Park (1976), 62 Ill. 2d 523; Paglani v. Police Board (1975), 61 Ill. 2d

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233; Peters v. City of Springfield (1974), 57 Ill. 2d 142; Clarke v. Village of Arlington Heights (1974), 57 Ill. 2d 50; People ex rel. Hanrahan v. Beck (1973), 54 Ill. 2d 561.)

Since by sections 34-53 and 34-55 (Ill. Rev. Stat. 1977, ch. 122, pars. 34-53, 34-55) the city of Chicago levies the taxes for the board of education, the levy of such taxes must pertain to the city's government and affairs. In City of Rockford v. Gill (1979), 75 Ill. 2d 334, the Illinois Supreme Court considered the question of whether an ordinance which levies a tax in excess of the statutory maximum is within the power of a home rule municipality. In Rockford, the city, at the request of the Rockford library board, adopted a tax levy ordinance which was in excess of the levy prescribed by State law. As in the situation you have described, the actual preparation of the library budget and control of the funds were vested in the library board. The city was only responsible for levying the tax. The Supreme Court noted that the Act mandating the tax levy for library purposes limitation was passed prior to the 1970 Constitution. The Court held, at page 341:

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* * * It is manifestly impossible to find a legislative intention to limit the city's home rule powers of taxation in a statute that pre-dates the 1970 Constitution because, as this

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court said in Kanellos, the concept of home rule was 'totally foreign' to pre-1970 legislative contemplation. (53 Ill. 2d 161, 166-67.) * * *

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I cannot perceive any relevant distinction between the situation presented to the Court in Rockford and the situation you have described involving the Chicago school district. Both the library board and the school district are autonomous budgetary units which are dependent on the city to levy taxes. (Ill. Rev. Stat. 1977, ch. 81, par. 31.) Therefore, based on the reasoning in City of Rockford v. Gill, it is my opinion that the city of Chicago may, pursuant to its home rule powers, authorize a tax levy for school purposes in excess of the maximum set out in section 34-53 of The School Code.

Very truly yours,

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