



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

May 6, 1997

FILE NO. 97-010

TOWNSHIPS:  
Financing Construction of Town Hall

Honorable Michael J. Waller  
State's Attorney, Lake County  
18 North County Street  
Waukegan, Illinois 60085-4363

Dear Mr. Waller:

I have your letter wherein you inquire whether a township may obtain a loan to finance the construction of a new town hall without submitting the matter to popular referendum. For the reasons hereinafter stated, it is my opinion that a township possesses the statutory authority, without referendum approval, to construct a town hall under contracts providing for payment over a period of time of not more than five years; the power to obtain a loan to finance the construction is implicit in these provisions.

Subsection 85-10(c) of the Township Code (60 ILCS 1/85-10(c) (West 1994)) provides:

" \* \* \*

(c) A township may acquire (by purchase, gift, or legacy) and hold property, both real and personal, for the use of its inhabitants and may sell and convey that property. A township may purchase any real estate or personal property for public purposes under contracts providing for payment in installments over a period of time of not more than 20 years in the case of real estate and not more than 10 years in the case of personal property. A township may construct a township hall under contracts providing for payment over a period of time of not more than 5 years. The interest on the unpaid balance shall not exceed that permitted in the Bond Authorization Act.

\* \* \*

(Emphasis added.)

The emphasized language was added to subsection 85-10(c) by Public Act 87-351, effective January 1, 1992. It clearly contemplates the extension of credit to a township to finance construction of a township hall, with periodic payment of the amount extended together with interest.

Section 140-5 of the Township Code (60 ILCS 1/140-5 (West 1994)) provides, in part:

"Petition and referendum for township hall.

(a) Whenever it is desired to build, purchase, or lease, for a longer period than 5 years, a township hall, a multi-purpose senior center, or a combined township hall and multi-purpose senior center in any township, at least 25 electors of the township may, before the time of giving notice of the annual township meeting, file with the township clerk a petition in writing that the

Honorable Michael J. Waller - 3.

proposition of building, purchasing, or leasing a township hall, a multi-purpose senior center, or a combination township hall and multi-purpose senior center and issuing bonds for the building, purchase, or lease be submitted to the voters of the township at the next ensuing general election. \* \* \*

\* \* \*

"

Other provisions of article 140 of the Township Code (60 ILCS 1/140-5 et seq. (West 1994)) set forth referendum procedures, and provide for the issuance of bonds and a tax to repay them.

Different sections of the same statute should be construed as being consistent, rather than inconsistent, and should be interpreted as in pari materia. (Mann v. Board of Education (1950), 406 Ill. 224.) Nonetheless, it should not be presumed that the General Assembly intended a meaningless act when enacting a statute. (Niven v. Siqueira (1985), 109 Ill. 2d 351.) Thus, the two quoted sections should be construed as being consistent with one another, but each must be given meaning. There is no inconsistency in these provisions, if subsection 85-10(c) is construed as creating a limited exception to the general requirements applicable to constructing town halls.

The plain language of subsection 85-10(c) authorizes the construction of a town hall under contracts providing for payment over a period of time of not more than five years, with interest limited to that permitted in the Bond Authorization Act. There is no reference to any referendum requirement in the statute nor is there any indication that it was the intent of the

Honorable Michael J. Waller - 4.

General Assembly to apply the requirements of article 140 of the Township Code by implication. Therefore, it is my opinion that subsection 85-10(c) should be given effect as written; it does not require referendum approval for the construction of a township hall in accordance with its provisions.

Moreover, it is my opinion that implicit in subsection 85-10(c) is the authority for a township to obtain a loan to finance the construction of a township hall. Although subsection 85-10(c) does not delineate any specific method of financing, two methods of financing improvements to real property are commonly encountered: firstly, the contractor or a third party may agree to assume the costs of construction subject to periodic installment payments computed to return those costs within a fixed period; or, secondly, the purchaser may obtain the necessary funding through a loan to pay for the improvements when constructed, subject to repayment of the borrowed funds through installments. From a contractual standpoint, there is no significant distinction between these methods. In either circumstance, the purchaser is obligated to pay the amount financed in accordance with the terms of the contract.

From a practical standpoint, however, the availability of funding under each of these methods may be significantly different. For example, there may not be contractors in a given area who have the resources available and the willingness to assume the costs of construction in advance when payment of the

Honorable Michael J. Waller - 5.

sums advanced (plus moderate interest) will not be recouped in full for up to five years. On the other hand, it is much more likely that banks, savings and loans and other commercial lenders will not only have funds available, but also procedures to deal with periodic repayment of the sums lent.

Statutes must be reasonably construed in accordance with practical application. (People v. Johannsen (1970), 126 Ill. App. 2d 31, 34.) To construe subsection 85-10(c) of the Township Code as not implicitly authorizing a township to obtain a loan of funds to construct a township hall would ignore the practicalities of the situation, and frustrate the obvious intent of the General Assembly to facilitate the construction of township halls where bond issuance is not necessary. Therefore, it is my opinion that a township may, pursuant to subsection 85-10(c) of the Township Code, obtain a loan to finance the construction of a township hall without referendum approval if the loan is to be repaid with interest in installments within five years.


I must add, however, that neither this subsection 85-10(c) nor any other provision of the Township Code permits a township to mortgage its property to secure a loan. It has long been the rule in this State that a unit of local government may not legally execute a mortgage without express statutory authority to do so. (1933 Ill. Att'y Gen. Op. 758.) Townships have not been granted the express authority to mortgage their property.

Honorable Michael J. Waller - 6.

Therefore, although a township may arrange to pay for a town hall in installments, it may not give a mortgage as security for the payment of a loan.

Further, subsection 85-10(c) does not set forth specific procedures for the making of the contracts in question. Therefore, section 30-50 of the Township Code (60 ILCS 1/30-50 (West 1994)), regarding purchase and use of property by direction of the electors at a town meeting, and section 85-35 (60 ILCS 1/85-35 (West 1994)), regarding bidding on contracts, will be applicable, as appropriate, to any purchase or construction of a town hall.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL