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MUNICIPALITIES:
Whether a Municipality
Can Assume Preincorporation
Expenses

Frank A. Kirk
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303 East Monroe Street
Springfield, Illinois 62786

Dear Mr. Kirk:

I have your letter wherein you ask whether a municipality can assume debts incurred for attorneys' fees in connection with the incorporation of the municipality and pay those debts from municipal funds. You also ask whether, if such assumption is permissible, action upon it may be taken by a city council, one or more of the members of which were members of a home owners association which retained the attorney to provide legal services in connection with the incorporation

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proceedings. It is my opinion that the municipality cannot assume the debt in question and pay that debt from municipal funds. In light of my answer to your first question, it will not be necessary for me to respond to your second question.

At the outset, it is necessary to determine to whom the costs of a municipal incorporation proceeding are chargeable. There is no statutory provision or Illinois case law speaking to this question so one must look to the common law for an answer. At common law the persons involved in the incorporation proceeding must pay the costs incurred by them in securing the incorporation and may not recover those costs from the municipality. (In Re Borough of Wayne, 12 Pa. Super. 372 (1900); Board of County Commissioners v. Humes, 356 P. 2d 910 (Colo. 1960).) Therefore, it appears that the persons active in the incorporation proceeding have no right to recover the costs, which they incurred, from the municipality.

Since the home owners association apparently has no legal right to recover incorporation costs from the municipality, the question then arises as to whether or not the municipality can voluntarily assume those costs. Initially, it must be noted that a non-home rule municipal corporation, such as the one in question, has no inherent powers but derives both its existence and powers from the legislature. (City of Ottawa v. Brown, 372 Ill. 468.) Thus, a municipal corporation has

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only those powers granted to it by statute. Furthermore, statutes granting powers to municipal corporations are to be strictly construed. People v. Carnivale, 21 Ill. App. 3d 780.

The purposes for which the municipality may appropriate money are delimited by section 8-1-2 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, pars. 1-1-1 et seq.) which provides as follows:

"The corporate authorities may appropriate money for corporate purposes only and provide for payment of debts and expenses of the corporation." (emphasis added.)

Thus, a municipality may only appropriate money for a corporate purpose, and it is limited to providing for the payment of debts and expenses of the corporation. No express authorization to pay costs incurred in the incorporation proceedings is given so the meaning of the statutory language must be examined.

The Illinois Supreme Court in Elsensau v. City of Chicago, 334 Ill. 78 at page 81, defined a "corporate purpose" as follows:

" * * * A corporate purpose has been defined to be some purpose which is germane to the objects for which the corporation was created. It is such a purpose as has a legitimate connection with those objects and a manifest relation thereto. [citations omitted.]" (emphasis added.)

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The payment of costs incurred in incorporation proceedings does not appear to be an object for which the corporation was created.

Section 8-1-2 also provides that appropriations may be made only to provide for the payment of debts and expenses of the corporation. In this situation, however, the debt incurred for attorneys' fees is a debt of the home owners association rather than one of the municipality, and the expense is an expense of that association rather than one of the municipality. Therefore, the cost incurred for attorneys' fees in the proceedings for the incorporation of the municipality cannot be considered either a debt or expense of the corporation.

Therefore, it is my opinion that a municipality may not assume or pay attorneys' fees incurred by a home owners association in the proceedings for the incorporation of that municipality.

Very truly yours,

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