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SPRINGFIELD

August 18, 1977

FILE NO. S-1288

COUNTIES:

Lease of a County Building
to a Not-for-Profit Corpora-
tion for Public Purposes.

Honorable C. Michael Witters
State's Attorney
Wabash County
P.O. Box 769
Mt. Carmel, Illinois 62863

Dear Mr. Witters:

I have your letter wherein you request my opinion
on the following question:

Does the leasing of a county building for nominal consideration to the Wabash Valley College Foundation, a not-for-profit corporation, for the sole purpose of providing dormitory space to students of Wabash Valley College, constitute a lease of public property for private purposes in contravention to section 1a of article VIII of the Illinois Constitution?

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Section 1a of article VIII of the Illinois Constitution of 1970 states:

"Public funds, property or credit shall be used only for public purposes."

In addition to this constitutional mandate courts have repeatedly held that the use of public money for private purposes is a violation of due process. People ex rel. Greening v. Bartholf (1944), 388 Ill. 445, 449; Winter v. Barrett (1933), 352 Ill. 441, 468; Chicago Motor Club v. Kinney (1928), 329 Ill. 120, 130.

It is not who receives the money or property, but rather the purpose of the use, which is dispositive of its constitutional validity. Thus, even though private interests may benefit indirectly from a sale, lease, or conveyance of public land, the transaction is nevertheless valid if done for a public purpose. People ex rel. City of Salem v. McMackin (1972), 53 Ill. 2d 347, 355; People ex rel. Adamowski v. Chicago Railroad Terminal Authority (1958), 14 Ill. 2d 230, 236; People ex rel. Gutknetc v. City of Chicago (1953), 414 Ill. 600, 611-612.

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It is clear from the debates of the Sixth Illinois Constitutional Convention that section 1a of article VIII was not intended to change the previous corresponding constitutional provisions as they had been interpreted and applied by the courts. Therefore, pursuant to that court interpretation, transactions can be made between units of government and non-governmental corporations or entities as long as a public purpose is served thereby. (II Record of Proceedings 869.) Also, the section is not intended to be an independent grant of power. It merely provides a mandatory test for otherwise authorized transactions. II Record of Proceedings, 870, 872.

Opinion No. S-825 (1974 Ill. Att'y. Gen. Op. 297) dealt with a question similar to the one posed here. A county-owned hospital planned to lease ground adjacent to the hospital to private physicians for the construction of their offices. It was my opinion that even though there would be incidental benefit to the physicians, a public purpose was being served by locating the offices near the hospital. In opinion No. NP-844, I advised that a lease of

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a portion of a county nursing home to a not-for-profit child day care center would be a public purpose.

The ultimate question is whether the use of public funds or property is for a public purpose. The concept of public purpose is an elastic concept capable of exceptions to meet changing conditions. (The People v. Chicago Transit Authority (1945), 392 Ill. 77, 86.) Normally, it is for the General Assembly to decide what is for public good and what are public purposes, and the courts regard such decisions with great respect. The People v. Chicago Transit Authority (1945), 392 Ill. 77, 86.

The public purpose of education is enshrined in article X of the Illinois Constitution:

"A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. * * *

The construction of dormitories has been approved for the use of tax revenue in section 1 of the Board of Governors of State Colleges and Universities Revenue Bond Act (Ill. Rev. Stat. 1975, ch. 144, par. 1011) as follows:

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"The Board of Governors of State Colleges and Universities or its successor is hereby authorized to:

(a) Acquire by purchase or otherwise, construct, equip, complete, remodel, operate, control, and manage student residence halls, dormitories, dining halls, student union buildings, field houses, stadiums, and any other revenue-producing buildings of such type and character as the Board or its successor shall from time to time find a necessity therefor exists and as may be required for the good and benefit of any of the State Colleges or State Universities under its jurisdiction and for that purpose may acquire property of any and every kind and description, whether real, personal or mixed, by gift, purchase or otherwise;

* * *

The powers of a community college district board do not specifically include building or providing dormitory accommodations. But an explicit grant is not a prerequisite for the existence of the power. Section 3-30 of the Public Community College Act (Ill. Rev. Stat. 1975, ch. 122, par. 103-30) negates a restrictive reading of the enumerated powers:

"The board of any community college district has the powers enumerated in Sections 3-31 through 3-43. This enumeration of powers is not exclusive but the board may exercise all

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other powers, not inconsistent with this Act, that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board."

Providing dormitory accommodations is one way to aid students in taking advantage of community college educational programs. The presence of such accommodations may in some cases make attendance at a community college possible for some who would otherwise not be able to attend due to lack of adequate transportation. It is clear that the existence of residential facilities would serve a valid public purpose and would be in the interest of the county as well. This public purpose is served whether done directly by the community college board or indirectly through a not-for-profit foundation.

From the foregoing it is my opinion that a lease by the county of the building in question to the Wabash Valley College Foundation for the purpose of providing dormitory facilities for students at Wabash Valley Junior College would be a lease of public property for a public purpose and therefore not in contravention of section 1a of article VIII of the Illinois State Constitution.

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Although the county has no explicit authority to provide aid directly to community college districts or indirectly through a college foundation, section 2 of The County Home Act (Ill. Rev. Stat. 1975, ch. 34, par. 5362) provides that:

" * * *
9. Upon the vote of a two-thirds majority of all the members of the [county] board, to sell, dispose of or lease for any term, any part of the home properties in such manner and upon such terms as it deems best for the interest of the county, and to make and execute all necessary conveyances thereof in the same manner as other conveyances of real estate may be made by a county.
* * * "

I also refer you to previous opinion Nos. S-691 and S-797 (1974 Ill. Att'y. Gen. Ops. 64 and 227) which discuss the terms and consideration required for the leasing of county property. Leasing must be for an adequate consideration.

Very truly yours,

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