



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

June 9, 1994

FILE NO. 94-015

PUBLIC PROPERTY:
Lease of Property from Public
Building Commission

Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether, under section 18 of the Public Building Commission Act, as amended by Public Act 87-1208, effective January 1, 1993, and Public Act 87-1279, effective April 2, 1992 (50 ILCS 20/18 (West 1992 Supp.)), a public hearing is required to be held annually prior to the extension of taxes for the payment of rent under a lease between a municipal corporation and a public building commission. For the reasons hereinafter stated, it is my opinion that only one hearing is required to be held concerning such a lease, which is to be held prior to the initial extension of taxes for the payment of rent.

Honorable Gary W. Pack - 2.

Section 18 of the Act, as amended, provides, in pertinent part:

"Whenever, and as often as, a municipal corporation having taxing power enters into a lease with a Public Building Commission, the governing body of such municipal corporation shall provide by ordinance or resolution, as the case may be, for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under such lease as and when it becomes due and payable. A certified copy of the lease of such municipal corporation and a certified copy of the tax levying ordinance or resolution, as the case may be, of such municipal corporation shall be filed in the office of the county clerk in each county in which any portion of the territory of such municipal corporation is situated, which certified copies shall constitute the authority for the county clerk or clerks, in each case, to extend the taxes annually necessary to pay the annual rent payable under such lease as and when it becomes due and payable. No taxes shall be extended for any lease entered into after the effective date of this amendatory Act of 1993, however, until after a public hearing on the lease.

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At the hearing, all persons residing or owning property in the municipal corporation shall have an opportunity to be heard orally, in writing, or both.

Upon the filing of the certified copies of the lease and the tax levying ordinance or resolution in the office of the county clerk or clerks of the proper county or counties, it shall be the duty of such county clerk or clerks to ascertain the rate per cent which, upon the value of all property subject to taxation within the municipal corporation, as that property is assessed or equalized by the Department of Revenue, will produce a net

Honorable Gary W. Pack - 3.

amount of not less than the amount of the annual rent reserved in such lease. The county clerk or clerks shall thereupon, and thereafter annually during the term of the lease, extend taxes against all of the taxable property contained in that municipal corporation sufficient to pay the annual rental reserved in such lease. * * *" (Emphasis added.)

The provisions concerning public hearings were added by Public Acts 87-1208 and 87-1279.

In construing a statute, the intention of the General Assembly is controlling, and the various provisions of the statute should be construed together in light of the general purpose and object of the Act to give effect to the intent and purpose of the General Assembly in enacting it. (People ex rel. Nelson v. Olympic Hotel Bldg. Corp. (1950), 405 Ill. 435, 444.) Further, statutes must be reasonably construed, so as to be applied in a practical and common sense manner. People v. Illinois Central R.R. Co. (1940), 373 Ill. 523, 526.

The purpose of the Public Building Commission Act is, inter alia, to facilitate the acquisition, construction and enlargement of buildings for the use of local governmental agencies. (Ill. Rev. Stat. 1991, ch. 85, par. 1032; 50 ILCS 20/2 (West 1992).) The amendments in question, like all of the provisions of the Act, should be construed with recognition of that purpose in order to give effect to the intent of the General Assembly.

Honorable Gary W. Pack - 4.

The plain language of section 18, as amended, provides that no taxes shall be extended for the payment of rent under any lease entered into between a municipal corporation and a public building commission until after a public hearing is held "on the lease". Thus, the focus of the hearing is not upon the extension of taxes during the ensuing year, but rather upon all of the provisions of the lease, including the term thereof and the amount of rent to be paid during each year of that term. Interested persons are to be given an opportunity to address the effect which the lease may have on tax rates over the entire term of the lease, not only during the next taxing cycle.

It is clear that the General Assembly intended to provide residents of a taxing district with an opportunity to be heard with respect to the terms of leases for public buildings. However, to subject such leases to annual challenges could compromise the work and stability of both the lessee and the public building commission which is responsible for construction costs. Fiscal planning for such expenses as building construction must necessarily be done on a long term basis. In view of the purpose of the Public Building Commission Act, annual hearings as a prerequisite to the extension of taxes for rental payments would not only be impractical, but absurd. Section 18 must be construed to avoid such an interpretation. People v. Illinois Central R.R. Co. (1940), 373 Ill. 523, 526.

Honorable Gary W. Pack - 5.

The language of the balance of section 18 further supports the conclusion that only a single hearing is necessary. Section 18 requires the filing of a certified copy of the lease and the ordinance or resolution directing the levy of the tax to pay rent with the county clerk, which constitute authority for the county clerk to ascertain the rate of the levy and, "thereafter annually during the term of the lease", to extend taxes sufficient to pay the rent. Nothing in the language of the section suggests that an ordinance or the lease must be filed each year in order to authorize the extension of the tax by the clerk. Rather, once those documents are properly filed, the clerk has continuing authority to extend the tax each year in accordance with their provisions. Since the clerk is authorized to extend taxes during the entire term of the lease, little would be gained by requiring an annual public hearing on the extension.

Therefore, it is my opinion that the language of section 18 of the Public Building Commission Act demonstrates an intent that only one hearing is required to be held, which is to encompass all aspects of the proposed lease, and that the filing of the lease and the ordinance authorizing the tax empowers the county clerk to extend the tax throughout the entire term of the

Honorable Gary W. Pack - 6.

lease. Consequently, there is no requirement that hearings on the lease be held annually.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS
ATTORNEY GENERAL