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COMMERCIAL LAW AND CONTRACTS:
Authority of Joliet Regional
Port District to Consummate
Purchase of Airport Without
Referendum Approval

Honorable Edward F. Petka
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Will County Courthouse
14 West Jefferson Street
Joliet, Illinois 60431

Dear Mr. Petka:

I have your letter wherein you inquire whether the Joliet Regional Port District, hereinafter referred to as the Port District, must obtain referendum approval for the acquisition and operation of the Lewis University Airport pursuant to a sale agreement entered into by the Port District and Lewis University on December 30, 1983, and amended on June 14, 1984. For the reasons hereinafter stated, it is my

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opinion that the Port District may consummate the transaction and acquire and operate the airport without referendum approval.

This office has been advised that the Port District has been discussing and negotiating the acquisition and operation of the Lewis University Airport for almost ten years. Over that period of time, the Port District, the Federal government, the State, the city of Joliet, Lewis University, and private citizens have invested over \$143,000 in anticipation of and in preparation for the acquisition and operation of the airport by the Port District. Acting under authority of section 4.6 of the Joliet Regional Port District Act (Ill. Rev. Stat. 1983, ch. 19, par. 254.6), the Port District passed a resolution on December 30, 1983, designating the Lewis University Airport as the site for an airport to be developed and operated by the Joliet Regional Port District. On the same date, the Port District executed an agreement with Lewis University for the purchase of the airport property. At that time, section 4.6 of the Joliet Regional Port District Act authorized the Port District:

"To locate, establish and maintain a public airport, public airports and public airport facilities within its corporate limits or within or upon any body of water adjacent thereto, and to construct, develop, expand, extend and improve any such airport or airport facility."

Thus, it is clear that the Port District had authority to acquire, maintain and operate an airport when it entered into the above-described contract on December 30, 1983.

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On January 5, 1984, section 4.6 of the Joliet Regional Port District Act was amended by Public Act 83-1102, effective July 1, 1984, to add the language underscored below:

"To locate, establish and maintain a public airport, public airports and public airport facilities within its corporate limits or within or upon any body of water adjacent thereto, and to construct, develop, expand, extend and improve any such airport or airport facility.

Such power and those related thereto may be exercised only with the approval of the voters in the district. The Board shall by ordinance, duly adopted, cause to be submitted to the legal voters of the district a proposition to establish and maintain an airport within the district by certifying the proposition and the ordinance to the proper election officials who shall submit the proposition to the voters at an election in accordance with the general election law. In addition to the requirements of the general election law, notice of the submission of such proposition at any election shall be published at least 10 days prior to the date of the election at least once in one or more newspapers published in the district or, if no newspaper is published in the district, in one or more newspapers with a general circulation within the district. The proposition shall be in substantially the following form:

<u>Shall the Joliet Regional Port District be authorized to establish and maintain a public airport facility?</u>	<u>YES</u>	
	<u>NO</u>	

If a majority of those voting upon the proposition vote in favor of the proposition, the Board may thereafter exercise such powers."
(Ill. Rev. Stat. 1984 Supp., ch. 19, par. 254.6.)

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This office has been further advised that on June 14, 1984, the Port District and Lewis University executed an amendment to the sale agreement. The only part of the amendment which is relevant to this analysis is a clause which pertains to the securing of authorization for the purchase by legislation, referendum, declaratory judgment, or otherwise. (See Amendment to Sale Agreement, dated June 14, 1984, paragraph 8.01(e).) This clause was intended to condition the purchase of the airport on referendum approval only in the event that said purchase was determined to be subject to Public Act 83-1102. Since the Port District had legislative authority to establish and maintain an airport at the time it entered into the contract and amendment thereto (Ill. Rev. Stat. 1983, ch. 19, par. 254.6), the condition was satisfied at the execution of the subject instruments, and no duty to obtain additional authorization was imposed upon the Port District by the clause.

Section 3 of the Joliet Regional Port District Act (Ill. Rev. Stat. 1983, ch. 19, par. 253) provides that the Port District is a political subdivision, body politic, and municipal corporation. It is a fundamental principle that municipal corporations are creatures of the General Assembly and, as such, are entirely subject to the legislative will. (People ex rel. Landwer v. Village of North Barrington (1968),

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94 Ill. App. 2d 265, 268.) Municipal corporations possess no inherent power, but rather, they possess only such powers as have been expressly granted by the General Assembly or which are incidental to or arise by necessary implication from their express powers. (LaSalle National Bank v. Village of Brookfield (1981), 95 Ill. App. 3d 765, 770; Village of Cherry Valley v. Schuelke (1977), 46 Ill. App. 3d 91, 93.) In discussing the powers of a municipal corporation, the Illinois Supreme Court has held:

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* * *

* * * Over the years, the doctrine of legislative supremacy over the territorial limits, the property, and the funds of municipal corporations has been frequently applied. [Citations.] In People ex rel. Taylor v. Camargo Community Consolidated School Dist. 313 Ill. 321, the court, speaking of 'public municipal corporations,' said, p. 324: 'The character of the functions of such municipal corporations, the extent and duration of their powers and the territory in which they shall be exercised rest entirely in the legislative discretion. The governmental powers which they may exercise and the property which they may hold and use for governmental purposes are equally within the power of the legislature. Their powers may be enlarged, diminished, modified or revoked, their acts set aside or confirmed, at the pleasure of the legislature. The State may, with or without the consent of the inhabitants or against their protest, and with or without notice or hearing, take their property without compensation and vest it in other agencies or hold it itself, expand or contract the territorial area, divide it, unite the whole or part of it with another municipality, apportion the common property and the common burdens in accordance with the legislative

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will, and it may abolish the municipality
altogether. * * *

* * * "
(Emphasis added.) People ex rel. Gutknecht v.
City of Chicago (1953), 414 Ill. 600, 621-22.

See also People ex rel. Landwer v. Village of North Barrington
(1968), 94 Ill. App. 2d 265, 272; Seabrook Citizens for the
Defense of Home Rule v. Yankee Greyhound Racing, Inc. (N.H.
S. Ct. 1983), 456 A.2d 973, 975-76.

While the General Assembly may grant, withhold,
withdraw, alter, or modify the rights and powers of a municipal
corporation as it sees fit (Arms v. City of Chicago (1924), 314
Ill. 316, 321), it is generally held that statutes may not be
retrospectively applied where such application would interfere
with, impair, or divest vested rights (Griffin v. City of North
Chicago (1983), 112 Ill. App. 3d 901, 905; Jacober v. Board of
Commissioners of City of Covington (Ky. App. Ct. 1980); 607
S.W.2d 126, 127), and that the General Assembly may not by
statute substantially impair contractual obligations.

Continental Illinois National Bank and Trust Company of Chicago
v. The State of Washington (9th Cir. 1983), 696 F.2d 692, 700;
McAleer Buick-Pontiac Co. v. General Motors Corp. (1981), 95
Ill. App. 3d 111, 113.

The retroactive operation of legislation is not
favored, and as a general rule, statutes are construed to

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operate prospectively only, unless the General Assembly has clearly and expressly stated its intention that the legislation be retroactively applied. (The Vendo Co. v. Stoner (1974), 58 Ill. 2d 289, 310, cert. denied, 420 U.S. 975, 95 S. Ct. 1398 (1975); United States Steel Credit Union v. Knight (1965), 32 Ill. 2d 138, 141-42; McAleer Buick Pontiac Co. v. General Motors Corp. (1981), 95 Ill. App. 3d 111, 112.) A retroactive or retrospective law has been defined as "one that takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past". (United States Steel Credit Union v. Knight (1965), 32 Ill. 2d 138, 142; see also Griffin v. City of North Chicago (1983), 112 Ill. App. 3d 901, 904-05.) As stated above, the General Assembly cannot by retroactive laws divest vested or contractual rights. (The Peoples Store of Roseland v. McKibbin (1942), 379 Ill. 148, 152; In re Ladewig (1975), 34 Ill. App. 3d 393, 398.) To be considered a vested right within the protection of this principle of law, a right must be "something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another". People ex

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rel. Eitel v. Lindheimer (1939), 371 Ill. 367, 373; Hogan v. Bleeker (1963), 29 Ill. 2d 181, 188.

The above-stated principles regarding the retrospective operation of legislation clearly work to preclude the application of Public Act 83-1102 to the contract entered into by the Port District and Lewis University for the purchase by the Port District of the University airport. According to information supplied this office relative to the factual circumstances of the purchase agreement, the original contract for the purchase of the airport was executed on December 30, 1983, prior to the date Public Act 83-1102 was enacted (January 5, 1984) and effective (July 1, 1984). Upon the execution of the contract, the Port District had at least an equitable interest in the airport property. (See Shay v. Penrose (1962), 25 Ill. 2d 447, regarding the doctrine of equitable conversion.) The rights of the Port District and Lewis University with respect to the contract and the airport became vested at that time. If the acquisition and operation of the airport were subjected to referendum approval, as provided in Public Act 83-1102, a majority of the electors in the district might vote against authorizing the Port District to operate an airport. (See generally Continental Illinois National Bank and Trust Co. of Chicago v. The State of Washington (9th Cir. 1983), 696 F.2d 692.) Public Act 83-1102

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clearly would impose a new duty on a transaction already past, and as such, would work to divest vested rights. Accordingly, subjecting the acquisition and operation of the airport purchase agreement to the provisions of Public Act 83-1102 would constitute an impermissible retrospective application of such legislation.

Related to the principle that legislation will not be applied retroactively to divest vested rights are the constitutional provisions proscribing the passage of any laws impairing the obligation of contracts. (See McAleer Buick-Pontiac Co. v. General Motors Corp. (1981), 95 Ill. App. 3d 111, 113.) Article I, section 10, clause 1 of the United States Constitution (U.S. Const., art. I, § 10) provides in part as follows:

"No State shall * * * pass any * * * Law
impairing the Obligation of Contracts * * *.

* * *

"

Similarly, article I, section 16 of the 1970 Illinois Constitution (Ill. Const. 1970, art. I, § 16) provides as follows:

"No ex post facto law, or law impairing the
obligation of contracts * * * shall be passed."

While the prohibition against the impairment of contracts is not absolute, the courts have generally held that the laws which subsist at the time and place of the making of a contract

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enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. Home Building and Loan Association v. Blaisdell (1934), 290 U.S. 398, 429, 54 S. Ct. 231; United States Trust Co. of New York v. State of New Jersey (1977), 431 U.S. 1, 19, 97 S. Ct. 1505, 1516, n.17; People v. Ottman (1933), 353 Ill. 427, 430.

In Continental Illinois National Bank and Trust Co. of Chicago v. The State of Washington (9th Cir. 1983), 696 F.2d 692, a municipal corporation of the State of Washington had entered into several contracts for the construction and financing of nuclear power plants. After such contracts had been entered into, the Washington State Energy Financing Voter Approval Act became effective, which generally provided that no public agency could issue or sell bonds to finance the construction of a major energy project without first obtaining the approval of the electorate in the district encompassed by the public agency. Since the contracts in question were entered into before the effective date of the aforementioned Act, the court held that the application of the Act to the subject contracts was an unconstitutional impairment of contracts. The court stated:

" * * *

* * * As a creature of the state a municipal corporation derives its power from the legislature. Once having granted certain powers to a municipal corporation, which in turn enters

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into binding contracts with third parties who have relied on the existence of those powers, the legislature * * * is not free to alter the corporation's ability to perform. * * *

* * * No standard can be imposed on the electorate in exercising its decision, nor can it be subjected to any review. It can reject the proposal for any reason or no reason. The addition of the referendum requirement is, we conclude, a severe impairment that defeats the expectations of the parties under the contracts. [Citation.]

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Continental Illinois National Bank and Trust Co. of Chicago v. The State of Washington (9th Cir. 1983), 696 F.2d 692, 699-700.

It is my opinion that the constitutional guarantees against laws impairing the obligation of contracts prevent the application of Public Act 83-1102 to the contract entered into by the Port District for the acquisition of the Lewis University Airport. At the time the parties entered into the contract, the Port District had the authority, not conditioned on additional approval, to establish and operate an airport (Ill. Rev. Stat. 1983, ch. 19, par. 254.6), and the law conferring such right at that time must be considered a part of the purchase agreement. The subsequent attempt to impose referendum approval, as in Continental Illinois National Bank and Trust Co. of Chicago v. The State of Washington, is a severe impairment that defeats the expectation of the parties under the contracts.

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For the aforementioned reasons, it is my opinion that the Joliet Regional Port District may consummate the transaction with Lewis University for the acquisition and operation of the Lewis University Airport without referendum approval by the voters in the district. The referendum requirements of Public Act 83-1102 apply only to transactions of the Port District which might be entered into after the effective date of that Act.

Very truly yours,


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