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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

October 19, 1982

FILE NO. 82-035

PUBLIC HEALTH:
Contract For Food Sanitation
Program Between Illinois
Department of Public Health
and County Health Department

Honorable Edward Litak
State's Attorney
Vermilion County
Courthouse
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. Litak:

I have your letter in which you inquire as to the propriety of a recent contract entered into between the Vermilion County Board of Health and the Illinois Department of Public Health, pursuant to section 3, Rule 3.2.1 of the Food Sanitation Program promulgated by the Department. You have asked for a response to the following specified questions:

1. Does the adoption of Rule 3.2.1 of the Food Sanitation Program exceed the authority given the Illinois Department of Public Health by section 55.12 of The Civil Administrative Code of Illinois (Ill. Rev. Stat. 1981, ch. 127, par. 55.12)?

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2. Is the legal base as adopted in Rule 3.2.1 of the Food Sanitation Program in conflict with the rules and regulations for food service sanitation promulgated in accordance with section 11 of "AN ACT to prevent the preparation, manufacture, packing, storing, or distributing of food, etc." (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 77) and section 21 of the Illinois Food, Drug and Cosmetic Act (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 521)?
3. Does the Illinois Department of Public Health qualify as a municipality, other political subdivision or non-official agency pursuant to section 14 of "AN ACT in relation to the establishment and maintenance of county and multi-county public health departments" (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c13)?
4. Does the contract between the Vermilion County Board of Health and the Illinois Department of Public Health violate the provisions of section 4 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1981, ch. 34, par. 2104)?
5. Should the rules and regulations of the Food Sanitation Program be adopted by the Vermilion County Board since the actual inspections will be made by inspectors from the Vermilion County Health Department and their salaries would be paid from the general fund of Vermilion County?

The basic question raised by your request, however, is whether the Vermilion County Board of Health may contract with the Illinois Department of Public Health with respect to the Food Sanitation Program. For the reasons hereinafter stated, I agree with your opinion that the Vermilion County Board of Health may enter into a contract with the Illinois Department of Public Health in order to adopt and enforce the Food Sanitation Program.

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Section 2 of "AN ACT in relation to public health" (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 22) provides, in pertinent part, as follows:

"The State Department of Public Health * * * may adopt, promulgate, repeal and amend rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health, * * * .

* * *

All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted.

* * *

"

The Vermilion County Health Department is organized pursuant to the provisions of "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments" (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c et seq.). County health departments are managed by a board of health pursuant to section 13 of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c12). The principal powers and duties of the board of health of a county health department are set forth in section 14 of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 20c13), which provides in pertinent part:

"The board of health of each county or multiple-county health department * * * may make and adopt such rules for its own guidance and for the government of the health department as may be deemed necessary to protect and improve public health not inconsistent with this Act. It shall:

* * *

6. Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health, and all county and municipal ordinances except as otherwise provided in this Act;

7. Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health, to arrest the progress of the same;

8. Within its jurisdiction, and professional and technical competence, make all necessary sanitary and health investigations and inspections;

9. Upon request, give professional advice and information to all city, village, incorporated town and school authorities, within its jurisdiction, in all matters pertaining to sanitation and public health;

* * *

The board of health of each county or multiple-county health department may:

1. Initiate and carry out programs and activities of all kinds, not inconsistent with law, that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease including tuberculosis;

* * *

3. Recommend to the county board or boards the adoption of such ordinances and of such rules and regulations as may be deemed necessary or desirable for the promotion and protection of health and control of disease;

* * *

"

It is clear that, pursuant to the provisions of section 2 of "AN ACT in relation to public health" and section 14 of "AN ACT in relation to the establishment and maintenance of county and

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multiple-county health departments", the Vermilion County Health Department has the duty to enforce the rules and regulations of the Illinois Department of Public Health, State laws regarding public health, and also county and municipal health ordinances.

In response to the first specific question raised, it is my opinion that the Illinois Department of Public Health is fully empowered to adopt and implement Rule 3.2.1,

Pursuant to section 2 of "AN ACT in relation to public health", the Illinois Department of Public Health has established the Food Sanitation Program. Rule 3.2.0 of the Program Standards states the purposes of the Program:

"This is a required program, having as its objective the protection of the health of the consumer by assuring that food and food products provided by food service establishments and retail food stores are protected against contamination by infectious agents or adulteration by toxic material."

Rule 3.2.1 of the Program provides the local legal base:

"3.2.1 - Local Legal Base: The Food Sanitation Program shall be administered in accordance with an ordinance or an agreement between the local agency and the Illinois Department of Public Health to enforce and observe all State laws and regulations pertaining to food service establishments and retail food stores."

The Illinois Department of Public Health is authorized by section 55.12 of The Civil Administration Code of Illinois (Ill. Rev. Stat. 1981, ch. 127, par. 55.12):

"To enter into contracts with the Federal Government, other States, local governmental units and other

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public or private agencies or organizations for the purchase, sale or exchange of health services and products which may benefit the health of the people. Any contract entered into with the Federal Government, with any other State government or with any public or private agency or organization not domiciled in Illinois shall not be effective unless it is approved in writing to the Governor."

In response to the second question raised, the provisions of "AN ACT to prevent the preparation, manufacture, packaging, storing, or distributing of food, etc." (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 67 et seq.) were enacted to prevent the preparation, manufacture, packing, storing or distributing of food intended for sale, or sale of food, under unsanitary, unhealthful or unclean conditions or surroundings, to create a sanitary inspection and to declare that such conditions constitute a nuisance. Section 11 of the Act (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 77) gives the Illinois Department of Public Health the duty of enforcing the Act. The purpose of the Illinois Food, Drug and Cosmetic Act (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 501 et seq.) is to establish uniform practices in the advertising and labeling of food, drugs and cosmetics, to prohibit the adulteration and misbranding of them and to provide enforcement procedures and penalties for any violations of these practices and prohibitions. Section 21 of the Act (Ill. Rev. Stat. 1981, ch. 56 1/2, par. 521) gives the Illinois Department of Public Health the duty of enforcing this Act. Since the Illinois Department of Public

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Health may contract with units of local government to enforce the laws requiring or permitting sanitary inspections, it is my opinion there is no conflict between the Food Sanitation Program and the provisions of section 11 of "AN ACT to prevent the preparation, manufacture, etc." or section 21 of the Illinois Food, Drug and Cosmetic Act.

In response to the third question, section 14 of "AN ACT in relation to the establishment and maintenance of county and multiple-county health departments provides in pertinent part as follows:

" * * *

The board of health of each county or multiple-county health department may:

1. Initiate and carry out programs and activities of all kinds, not inconsistent with law, that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease including tuberculosis;

* * * "

The above language, coupled with the requirements of section 2 of "AN ACT in relation to public health" and the other powers specified in section 14, constitutes full and sufficient authority for a board of health to carry out responsibilities pursuant to the Food Sanitation Program. Therefore, it is not necessary to determine whether the Department of Public Health is a municipality for purposes of section 14 or whether item 5 of the second paragraph thereof is applicable.

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With regard to the fourth question, section 4 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1981, ch. 34, par. 2104) provides, in pertinent part:

"Except as herein provided, neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year. * * * Nothing contained herein shall be construed to deprive the board of the power to provide for and cause to be paid from the county funds any charge upon said county imposed by law independently of any action of such board. Except as herein provided, no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been previously made."

There is insufficient information in your letter for determining whether the contract between the Illinois Department of Public Health and the Vermilion County Health Department would be inconsistent with the provisions of section 4 of the Act.

With respect to the fifth question, section 14 of "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments" provides, in pertinent part, as follows:

"The board of health of each county or multiple-county health department * * * may make and adopt such rules for its own guidance and for the government of the health department as may be deemed necessary to protect and improve public health not inconsistent with this Act. It shall:

* * *

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6. Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health, and all county and municipal ordinances except as otherwise provided in this Act;

7. Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health, to arrest the progress of the same;

8. Within its jurisdiction, and professional and technical competence, make all necessary sanitary and health investigations and inspections;

9. Upon request, give professional advice and information to all city, village, incorporated town and school authorities, within its jurisdiction, in all matters pertaining to sanitation and public health;

* * *

The board of health of each county or multiple-county health department may:

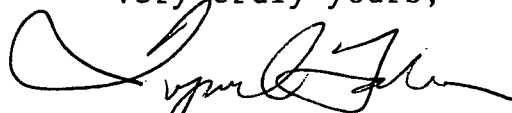
1. Initiate and carry out programs and activities of all kinds, not inconsistent with law, that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease including tuberculosis;

* * *

(Emphasis added.)

Based upon the language of section 14, it is my opinion that the Vermilion County Health Department is fully empowered to enforce the Food Sanitation Program pursuant to its agreement with the Illinois Department of Public Health, and that the Vermilion County Board would not be required to adopt the rules and regulations of the Program.

Very truly yours,



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