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ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 94-014

COUNTIES:
Authority of a County to
Enact an Ethics Ordinance

Honorable David Akemann
State's Attorney, Kane County
719 South Batavia Avenue
Geneva, Illinois 60134

Dear Mr. Akemann:

I have your predecessor's letter wherein he inquired whether the Kane County Board has the authority to enact a proposed comprehensive ethics ordinance to regulate the conduct and business interests of county officers, county employees and entities which conduct business with the county. For the reasons hereinafter stated, it is my opinion that the county board may compile into an "ethics code" those ordinances which govern specific activities and business interests which the county has been granted the authority to regulate.

Initially, I must state that it is not the province of the Attorney General to construe ordinances of units of local government. It is appropriate, however, to discuss the scope of

the authority of a county board to enact such an ordinance, as well as inherent limitations on that authority which must be given cognizance, and to note provisions of the proposed ordinance which appear to exceed the county's regulatory authority.

This question has been prompted by the action of the Kane County Board in proposing an ordinance creating an ethics code for Kane County. The proposed ordinance, a copy of which has been provided to me, establishes standards of conduct which would prohibit county officers and county employees from, inter alia:

- 1) using property owned or leased by the county for personal, non-county business;
- 2) soliciting or accepting gifts or other things of value in order to influence conduct or the performance of duties;
- 3) encouraging or discouraging political contributions by county employees; and
- 4) employing or advocating the employment in any county office, over which the officer or employee has management authority, any person who is a relative of the officeholder or employee.

The proposed ordinance also establishes rules of conduct for all persons or business entities which contract with the county or are subcontractors on county projects. The restrictions on contractor's activities may be summarized, in part, as follows:

- 1) No contractor may give to any county official, county employee or their immediate family members

any anonymous gifts or thing of value in order to influence the performance of their duties or to obtain a contract or employment with the county;

- 2) No contractor may employ a county officer or county employee while doing business with the county;
- 3) All contractors must disclose the principals of their business and all subsidiaries or parent companies doing business with the county;
- 4) No contractor, contractor's employees or contractor's principal may be employed by the county for a period of one year from the time a contractor ceases doing business with the county or an individual ceases employment with the contractor; and
- 5) No contractor may employ a former county officer or employee who has exercised management discretion, for one year after the termination of his or her relationship with the county.

Further, the proposed ordinance contains provisions which would require all county officers, county employees and contractors to file disclosure statements setting forth specified property and business interests and sources of income.

It is well established that a non-home-rule county, acting through its county board (Ill. Rev. Stat. 1991, ch. 34, par. 5-1004; 55 ILCS 5/5-1004 (West 1992)), may exercise only those powers which have been expressly delegated to it by the constitution or by statute, together with those powers which arise by necessary implication therefrom. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) A county board is authorized to regulate at least some of the activities which are included in the draft

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ordinance. For example, section 5-1005 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 5-1005; 55 ILCS 5/5-1005 (West 1992)) authorizes each county:

"1. To purchase and hold the real and personal estate necessary for the uses of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff.

* * *

3. To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.

* * *

"

(Emphasis added.)

Implicit in the grant to hold property for the county is the power to determine those uses which serve the county's interests, and to prohibit the use of county property for purposes which are not consistent with the public interest. Therefore, it is my opinion that a county may, by ordinance or otherwise, regulate the use of county property by county officers and employees.

Further, counties have been granted the power "[t]o make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate power". (Ill. Rev. Stat. 1991, ch. 34, par. 5-1005; 55 ILCS 5/5-1005 (West 1992).) Under this language, it is my opinion that the county board could, as part of the process of

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awarding contracts, require those businesses which contract with the board to disclose their principals, as well as their subsidiaries or parent corporations which also conduct business with the county.

The subjects of several of the provisions of the draft ordinance, however, clearly exceed the county board's regulatory authority. Under sections 3-2003.2, 3-3003, 3-5005.2, 3-6018, 3-9006 and 3-10005.1 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, pars. 3-2003.2, 3-3003, 3-5005.2, 3-6018, 3-9006, 3-10005.1; 55 ILCS 5/3-2003.2, 5/3-3003, 5/3-5005.2, 5/3-6018, 5/3-9006, 5/3-10005.1 (West 1992)), county clerks, coroners, recorders, sheriffs, State's Attorneys and treasurers have been granted the exclusive authority to control the internal operations of their respective offices. This control includes the authority to procure necessary equipment, materials and services to perform the duties of such office. (See 1977 Ill. Att'y Gen. Op. 93; 1978 Ill. Att'y Gen. Op. 53; 1984 Ill. Att'y Gen. Op. 9.) Therefore, to the extent that the proposed ordinance, for example, purports to prohibit those county officers from employing someone who has contracted with the county within a specified period of time, or prohibits the employment of a relative, the ordinance would be an invalid intrusion upon the internal control which county officers have been granted over the operations of their office by State law.

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I further note that the proposed ordinance also purports to regulate the making of political contributions by county employees. In this regard, I draw your attention to the provisions of the Local Governmental Employee Political Rights Act (Ill. Rev. Stat. 1991, ch. 85, par. 7601 et seq.; 50 ILCS 135/1 et seq. (West 1992)). Under subsection 10(a) of that Act (Ill. Rev. Stat. 1991, ch. 85, par. 7610(a); 50 ILCS 135/10(a) (West 1992)), "[n]o unit of local government * * * may make or enforce any rule or ordinance that in any way inhibits or prohibits any of its employees from exercising the employee's political rights". Section 5 of the Act (Ill. Rev. Stat. 1991, ch. 85, par. 7605; 50 ILCS 135/5 (West 1992)) defines "political rights" to include the making of campaign contributions. Thus, any ordinance limiting the exercise of political rights, including the making of campaign contributions, would appear to violate the provisions of the Act.

As a final matter, I note that the provisions of the proposed code purport to prohibit conduct which would also be violative of section 33-1 of the Criminal Code of 1961 (Ill. Rev. Stat. 1991, ch 38, par. 33-1; 720 ILCS 5/33-1 (West 1992)) (Bribery) or section 33-3 of the Code (Ill. Rev. Stat. 1991, ch. 38, par. 33-3; 720 ILCS 5/33-3 (West 1992)) (Official Misconduct). Violation of the Code is punishable by imposition of a fine of up to \$200; violations of the cited provisions are

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felonies. To the extent that an ethics ordinance is inconsistent with State statutes, it would be ineffective to supersede the prosecution of offenders under the Criminal Code. See 1982 Ill. Att'y Gen. Op. 108.

In summary, it is my opinion that the county board of a non-home-rule county may adopt ordinances regulating specific activities and business interests concerning which the county has been granted authority to act, and may compile those ordinances into an ethics code. Such ordinances, however, may not conflict with State law or impair the power of county officers to control the internal operations of their offices.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is centered below the closing "Respectfully yours,".

ROLAND W. BURRIS
ATTORNEY GENERAL