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FILE NO. 86-004

SCHOOLS AND SCHOOL DISTRICTS:
Power of County to Require
School District to Pay License
Fees for School Cafeterias

Honorable John A. Barra
State's Attorney, Peoria County
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Barra:

I have your letter wherein you ask whether the county of Peoria may require public school districts in the county to obtain food service licenses for their school cafeterias, and, if so, whether such districts may be required to pay license fees. For the reasons hereinafter set forth, it is my opinion that the county of Peoria may impose reasonable health regulations on school cafeterias located in the county, including

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licensing provisions requiring the payment of license fees in an amount sufficient to recover all or part of the cost of regulation and inspection.

You have stated that the county of Peoria maintains a full-time public health department established pursuant to "AN ACT in relation to the establishment and maintenance of county and multiple-county health departments" (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 20c et seq.). Such counties possess broad powers to regulate for the public health. Section 25.12 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1985, ch. 34, par. 419) provides in pertinent part as follows:

"During the period that 'An Act in relation to the establishment and maintenance of county and multiple-county public health departments', approved July 9, 1943, as amended, is in force in the particular county, [the county board has the power] to:

(1) do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; * * *

* * *

(Emphasis added.)

Among the regulations thereby authorized are those requiring the inspection and licensing of food service establishments. (1978 Ill. Att'y Gen. Op. 135.)

You have asked whether such regulations may be applied to school cafeterias. That issue was addressed in 1954 by Attorney General Castle, who construed the foregoing statutory

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provision as granting such power to counties having a public health department. (1954 Ill. Att'y Gen. Op. 117.) In 1982 Attorney General Fahner concluded that such counties have not only the power to regulate school cafeterias, but also the duty to inspect them for compliance with those regulations. (1982 Ill. Att'y Gen. Op. 151.) I concur in those conclusions. (See, generally, County of Cook v. City of Chicago (1924), 311 Ill. 234, holding that county buildings located in a city are subject to city fire and building ordinances, and Smith v. Board of Education of City of St. Louis (1949), 359 Mo. 264, holding that a school cafeteria is subject to the health ordinances of the city in which it is located.)

You have also asked whether, in regulating school cafeterias, the county may impose regulatory license fees on the school districts which operate them. It is beyond dispute that the county of Peoria has the general power to impose license fees as part of its regulatory scheme. The power to impose license fees is implicit in the power to regulate. (Concrete Contractors' Association of Greater Chicago v. Village of LaGrange Park (1958), 14 Ill. 2d 65; Father Basil's Lodge, Inc. v. City of Chicago (1946), 393 Ill. 246; American Baking Co. v. City of Wilmington (1938), 370 Ill. 400.) The amount of such fee, however, must bear a reasonable relationship to the cost of regulation and inspection. Bauer v. City of Chicago (1926), 321 Ill. 259, 265.

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I find no basis upon which school districts may establish their exemption from such fees. In the absence of a statutory basis for exemption, any such claim must rely upon a claim that school districts are somehow inherently or presumptively exempt from local ordinances imposing financial burdens. That claim was rejected in Board of Education of Community Consolidated School District No. 15 v. City of McHenry (1979), 71 Ill. App. 3d 904, in which a school district was held liable for a city motor vehicle license fee imposed on school district buses pursuant to its power to tax. If a school district enjoys no inherent or presumptive exemption from a license fee imposed pursuant to the taxing power, with its very general limitations regarding the purpose and amount of the fee, it would seem to follow a fortiori that it enjoys no such exemption from a fee imposed by the county of Peoria for the limited purpose of offsetting the costs incurred in performing its duty to inspect school cafeterias for compliance with health regulations.

It is therefore my opinion that the county of Peoria may impose reasonable health regulations on local public school cafeterias, including licensing provisions requiring the payment of license fees in an amount sufficient to recover all or part of the cost of regulation and inspection.

Very truly yours,


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