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FILE NO. S-825

COUNTIES:
Public Purpose:
Lease of Real Estate
To Doctors

Honorable Richard S. Simpson
State's Attorney
Lawrence County
Court House
Lawrenceville, Illinois 62439

Dear Mr. Simpson:

This is to acknowledge receipt of your letter in which you request an answer to the following question:

> "May the Lawrence County Memorial Hospital enter into a long term lease with two doctors, or possibly more, of part of the Real Estate adjoining its building, or nearby, for the doctors to build their own offices?"

You have stated that Lawrence County owns the Lawrence County Memorial Hospital and that the real estate on which the hospital building is situated was deeded to the hospital for hospital purposes. Subsequent to the

receipt of your letter, I was informed by Mr. William Hensley, County Clerk of Lawrence County, that the real estate to which you refer was deeded to the County of Lawrence in fee simple without restrictions or limitations on the use of the land in separate parcels or tracts during a period from August to November, 1945. I further assume that the real estate is not needed for county purposes.

Section 24 of "AN ACT in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 303) provides in part:

> "Each county shall have power—
>
> * * *
>
> Second—To sell and convey or lease any real or personal estate owned by the county.
>
> * * * "

In Yakley v. Johnson, 295 Ill. App. 77, the county board leased space in the courthouse to a private abstract company. An injunction was sought by the company to prevent the sheriff from forcibly removing the company. Although the case involved a specific statute that permitted the county board to lease unneeded space in the courthouse to certain specified public lessees, the 3rd District Appellate Court held that, in general, a county could not lease public property

for private purposes. This principle has been repeated in several Attorney General's opinions. (See, for example, 1949 Op. Atty. Gen. 251; 1962 Op. Atty. Gen. 328; 1964 Op. Atty. Gen. 214; 1965 Op. Atty. Gen. 176; Atty. Gen. Op. S-11, March 4, 1969.) The principle that public property cannot be used for private purposes has been codified in section 1(a) of article VIII of the Illinois Constitution of 1970 which provides: "Public funds, property or credit shall be used only for public purposes".

In the introduction of the Finance Article to the floor of the Convention, Delegate Karns made it clear that this section was intended to deal generally with the responsibilities and duties of both State and local governments. II 6th Ill. Const. Conv., Record of Proceedings, 869 (1972).

With reference to this specific sentence of section 1, Delegate Cicero stated:

> "The first sentence of this section is intended explicitly to reaffirm the general rule that public monies cannot be taken or applied for private purposes but can only be applied to public purposes. Indeed, there are many holdings in this state and others that affirm that general rule and provide that to use public monies for

> private purposes is a violation of due process.
>
> This section is also intended to remove any question concerning any continued life of article IV, section 20, if it contravenes the principle that I have just outlined. Article IV, section 20, provides that the state shall never pay, assume, or become responsible for the debts or liabilities or loan its credit to or in aid of any public or other corporation. In practice, this section has been interpreted to allow the state to extend its credit, use its monies, so long as the use was being extended for a public purpose. In other words, it has been interpreted as meaning the same thing as I outlined we intend this sentence to mean. We intend this provision to allow the state's credit to be used to guarantee debts of local governments, for example, to allow the state to enter into arrangements with development corporations, other types of nongovernmental corporations, so long as public purposes are served thereby.
>
> It is the feeling of the committee that in the age we live in many of these types of enterprises are going to be undertaken, as they are at the present time, through various types of ventures--cooperative ventures--between nongovernmental corporations and state or local governments; and this is intended to allow that type of thing so long as a public purpose is served." II 6th Ill. Const. Conv., Record of Proceedings, 869 (1972)

In answer to a question as to whether this section would authorize a local governmental unit to issue bonds to provide facilities for a private manufacturing enterprise, Delegate Cicero stated:

> "* * * This section does not confer such authority; but in the event such authority is conferred elsewhere, this section would provide a test or a standard by which any such authority or any such expenditures or credit extensions must be tested." II 6th Ill. Const. Conv., Record of Proceedings, 870 (1972)

In light of the statutory power of the county to lease property, your county may lease the subject real property so long as a public purpose is served. The issue is, therefore, narrowed to a determination of what constitutes a public purpose.

"Public purpose" is an elusive term which is difficult to define. As was stated by the Illinois Supreme Court in People ex rel. Adamowski v. The Chicago R.R. Terminal Authority, 14 Ill 2d 230, 236:

> "Public purpose is not a static concept. It is flexible, and is capable of expansion to meet conditions of a complex society that were not within the contemplation of the framers of our Constitution." See, also, Sommers v. Flint, (Mich.) 96 N.W. 2d 119.

16 McQuillin, Municipal Corporations, §44.35, page 97, states:

> "It is not possible to lay down any hard-and-fast rule by which to determine which purposes are

> public and which private. Hardly any project of public benefit is without some element of peculiar personal profit to individuals, hardly any private attempt to use the taxing power is without some colorable pretext of public good. Each case must be judged on its own facts, and any attempt at fixed definition must result in confusion and contradictions."

It has been repeatedly held that if the principle purpose and object is public in nature, it matters not that there is an incidental benefit to private interests. People ex rel. City of Salem v. McMackin, 53 Ill. 2d 347; People ex rel. Adamowski v. Chicago R.R. Terminal Authority, supra; People ex rel. Gutknecht v. The City of Chicago, 414 Ill. 600; Cremer v. Peoria Housing Authority, 399 Ill. 579.

It has been variably stated that a public purpose means "a purpose approved and authorized by law", (Frohmiller v. The Bd. of Regents, (Ariz.) 171 P. 2d 366), which has as its objective the promotion of public health, safety, morals, security, prosperity, contentment, and general welfare of all of the inhabitants, (Clifford v. The City of Cheyenne, (Wyo.), 487 P. 2d 1325; United Community Service v. Omaha Nat'l. Bank, 162 Neb. 786, 77 N.W. 2d 576; Lott v. The City of Orlando,

142 Fla. 338, 196 So. 313); a purpose or use necessarily for the common good and welfare of the people of the municipality, (Kearney v. The City of Schenectady, 325 N.Y.S. 2d 278), which confers direct public benefit of a reasonably general character as distinguished from a removed or theoretical benefit, (Opinion of the Justices to the House of Representatives, (Mass.) 197 N.E. 2d 691); and which not only serves to benefit the community as a whole but is also directly related to the functions of government. Roe v. Kervick, 42 N.J. 191, 199 A. 2d 834; Port Authority of the City of St. Paul v. Fisher, 269 Minn. 276, 132 N.W. 2d 183.

It has also been repeatedly held that what is a public purpose is a question within the discretion of the legislature in the first instance. Its determinations are entitled to great consideration and the courts are not warranted in setting aside its enactment unless it is clearly evasive of, or contrary to, constitutional limitations. Cremer v. Peoria Housing Authority, supra; People v. Chicago Transit Authority, 392 Ill. 77.

Relevant to the question presented herein is the

Medical Service Facility Act (Ill. Rev. Stat. 1973, ch. 85, pars. 921 et seq.), which grants to counties, cities, villages, and incorporated towns the power to acquire, erect, and maintain a medical service facility and lease space therein to doctors. Section 3 of the same Act provides:

> "The purpose of this Act is to enable local governmental units to serve the needs of the public more effectively in the several communities of this State in which the health and welfare of the people are in danger by the lack of adequate medical service by providing medical service facilities for lease in order to make settlement in the community more attractive to doctors." Ill. Rev. Stat. 1973, ch. 85, par. 923.

A legislative enactment is presumed to be constitutionally valid. (Livingston v. Ogilvie, 43 Ill. 2d 9.) Therefore, the public purpose sought to be met by the above statute must be presumed valid or such act must be held unconstitutional. It would, therefore, follow that the fundamental purpose sought to be achieved by the Act, i.e. providing medical facilities to doctors in the community, is a valid public purpose. Consequently, where the real estate in question is to be leased by the county

for the same purpose as that expressed in the Medical Service Facility Act, it must be assumed that such purpose is likewise a proper public purpose.

From the foregoing, it is my opinion that a lease by the county of the subject real estate to doctors on which will be built private doctor's offices is a lease for a public purpose.

I would like to emphasize that there are additional factors which you may consider in connection with a lease of the type you have described.

One such factor involves the length of the term of the lease. In a recent opinion, S-797, issued August 13, 1974, I held that a county may not enter into a lease for governmental purposes if the term of the lease extends beyond the life of the present county board, except where, for administrative purposes, it becomes necessary to extend for a short period, or where the county must of necessity enter into the lease agreement and the lease cannot be reasonably executed without exceeding the term of the county board. As an aid in determining whether the lease may bind successor county boards, I set out five criteria in the opinion to which

I refer you. It should be noted that whether the county is exercising a proprietary or governmental power is a question which can only be settled upon the facts of the particular case. See, City of Waco v. Thompson, (Texas) 127 S.W. 2d 223.

An additional factor which you must consider is the amount of the rental which will be charged by the county. The county is under a duty to lease the land for adequate consideration. (See, Opinion S-691, issued January 30, 1974.)

Finally, since the county holds the property in trust for the benefit of the inhabitants of the county (Sherlock v. Village of Winnetka, 59 Ill. 389), the county board should consider what limitations or restrictions should be appended to the lease so as to insure that the property will be used for a public purpose.

Very truly yours,

ATTORNEY GENERAL