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SPRINGFIELD

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FILE NO. S-1437

MUNICIPALITIES:
Annual Appropriation Ordinance
or Annual Budget

Honorable Dennis P. Ryan
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60085

Dear Mr. Ryan:

This responds to your letter wherein you inquired whether a village of approximately 1500 population is required to adopt an annual appropriation ordinance or an annual budget in lieu of an appropriation ordinance. You have advised that: the village in question is governed by a board of village trustees; that it does not levy any tax; that the village has revenues from sales tax, motor fuel tax and building permit fees; that the village spends approximately \$150,000 to \$200,000 per year on a variety of public projects; and that the village officials maintain that because the village does not levy a

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property tax that it is not required to adopt an appropriation ordinance or budget. You further inquire as to whether the expenditure of funds by the village officials, without an appropriation ordinance or budget, constitutes official misconduct.

It is my opinion that the village is required to adopt an annual appropriation ordinance or an annual budget. Section 8-2-9 of the Illinois Municipal Code (Ill. Rev. Stat. 1977, ch. 24, par. 8-2-9) provides in pertinent part:

"In municipalities with less than 500,000 inhabitants, the corporate authorities shall pass an ordinance within the first quarter of each fiscal year, to be termed the annual appropriation ordinance. In this ordinance the corporate authorities (1) may appropriate such sums of money as are deemed necessary to defray all necessary expenses and liabilities of the municipalities, including the amounts to be deposited in the reserves provided for in the Illinois Pension Code, as now or hereafter amended, and (2) shall specify the objects and purposes for which these appropriations are made, and the amount appropriated for each object or purpose. * * *

* * *

This Section shall not apply to municipalities operating under special charters."

Since the municipality about which you inquired contains less than 500,000 inhabitants, section 8-2-9 of the Code applies. I assume from your letter that the village is not operating under a special charter. The statute states that municipalities with less than 500,000 inhabitants

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shall pass an annual appropriation ordinance. The pertinent language of section 8-2-9 of the Illinois Municipal Code was contained in section 15-1 of the Revised Cities and Villages Act (Ill. Rev. Stat. 1945, ch. 24, par. 15-1) and was construed in People v. I.C.R.R. Co. (1947), 396 Ill. 200, 206. The court held that the provision requiring an annual appropriation ordinance was mandatory. Other cases holding this language to be mandatory are People v. Read (1914), 261 Ill. 502, and Riverside Co. v. Howell (1885), 113 Ill. 256.

It should be noted that in Simpson v. City of Highwood (1939), 372 Ill. 212, 219, the court held that the annual appropriation ordinance is mandatory only for corporate expenses and liabilities payable from the general funds of the municipality. Even under this rule the village in question would be required to adopt an annual appropriation ordinance because it appears that general funds would be used to pay expenses and liabilities. Sales tax revenue would become a part of the general funds of the village when received.

The fact that the village does not levy a property tax is immaterial. (People v. Sergel (1915), 269 Ill. 619, 622.) I am therefore of the opinion that the village in question is required to pass an annual appropriation ordinance.

Under sections 8-2-9.1 through 8-2-9.10 of the Illinois Municipal Code (Ill. Rev. Stat. 1977, ch. 24, pars. 8-2-9.1 through 8-2-9.10), if the village adopts them as

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therein provided, the village could pass an annual budget in lieu of the annual appropriation ordinance. Section 8-2-9.4 provides:

"Passage of the annual budget by the corporate authorities shall be in lieu of passage of the appropriation ordinance as required by Section 8-2-9 of this Act. The annual budget need not be published except in a manner provided for in Section 8-2-9.9. The annual budget shall be adopted by the corporate authorities before the beginning of the fiscal year to which it applies."

You also inquired whether it would be official misconduct if the village officials fail to pass an annual appropriation ordinance or budget. Section 3-14-5 of the Illinois Municipal Code (Ill. Rev. Stat. 1977, ch. 24, par. 3-14-5) provides in pertinent part:

"Every municipal officer who is guilty of a palpable omission of duty, * * * shall be guilty of a business offense and, on conviction, shall be fined not exceeding \$1,000. The court in which such conviction is had shall enter an order removing the convicted officer from office."

Section 33-3 of the Criminal Code of 1961 (Ill. Rev. Stat. 1977, ch. 38, par. 33-3) provides in pertinent part:

"A public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts:

(a) Intentionally or recklessly fails to perform any mandatory duty as required by law;
or

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(b) Knowingly performs an act which he knows he is forbidden by law to perform;

* * *

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Whether or not any of the village trustees could be considered to have violated either of the foregoing statutes is a question of fact upon which I do not express an opinion. Your attention is called, however, to People v. Campbell (1972), 3 Ill. App. 3d 984, 995, wherein the court held that ignorance or mistake as to a matter of either fact or law is a defense to a prosecution under section 33-3(a) of the Criminal Code of 1961. (Ill. Rev. Stat. 1977, ch. 24, par. 33-3(a).) This same case held that special knowledge of the law is required for there to be a violation of section 33-3(b) of the Criminal Code of 1961. Ill. Rev. Stat. 1977, ch. 24, par. 33-3(b).

Very truly yours,

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