



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-1161

**INTERGOVERNMENTAL COOPERATION:  
Power of Local Governmental  
Unit to Contract With Private  
Entities**

Honorable John J. Bowman  
State's Attorney  
DuPage County  
207 South Reber Street  
Wheaton, Illinois 60187

Dear Mr. Bowman:

This responds to your letter wherein you ask whether DuPage County can contract with a home owners association located in an unincorporated area of the county to provide police protection for that area, pursuant to section 10 of article VII of the Illinois Constitution of 1970. Section 10 provides in pertinent part:

"Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to

Honorable John J. Bowman - 2.

exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. \* \* \*

\* \* \*

(emphasis added.)

In construing a provision of the Constitution, like section 10 of article VII, the court will look to the natural and popular meaning of the language as it was understood at the time the Constitution was adopted, without resort to subtle or forced construction for the purpose of limiting or extending its operation. See, e.g., Hamer v. Board of Education of School District No. 109, 47 Ill. 2d 480, appeal after remand, 13 Ill. App. 2d 51; People v. Stevenson, 281 Ill. 17, 25.

The plain meaning of the language of section 10 of article VII, which provides the power to contract "in any manner", clearly is that a unit of local government has the power to contract with a home owners association for any reason, so long as the action has not been specifically prohibited by law or by ordinance. I am not aware of any law which would prevent DuPage County from agreeing with a home owners association to provide it with police protection.

Honorable John J. Bowman - 3.

Section 7 of article VII does impose a limitation upon the power conferred by section 10 of article VII in that it provides:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law \* \* \* "

Accordingly, a county cannot contract with an individual or private association or corporation to do something which the county has no authority to undertake. In addition, under article VIII of the Constitution, public funds and property can only be used for a public purpose. However, counties have the statutory power to provide for police protection through the office of the sheriff and his deputies.

I, therefore, am of the opinion that DuPage County is authorized to contract with a home owners association located in an unincorporated area of the county to provide police protection for that area. It makes no difference whether the association is incorporated or not. This is an alternative to organization of a special service area.

In addition to the plain meaning of the language, the debates of the Constitutional Convention, which are frequently consulted by the Supreme Court in interpreting the

Honorable John J. Bowman - 4.

meaning of the words of the Constitution (see Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553; Board of Education School District No. 12, Cook County v. Bakalis, 54 Ill. 2d 448; Wolfson v. Avery, 6 Ill. 2d 78), support this interpretation. See IV Record of Proceedings 3425-3429 and V Record of Proceedings 4444-4446.

While the debates emphasize that units of government could contract for services and equipment, there is nothing in the debates which indicates there was any intent that units should not contract to furnish services. In fact, the type of arrangement under discussion was specifically discussed with approval. See the remarks of delegate Mathias at V Record of Proceedings 4445:

"And we all know of situations in which foundations wanted to make some agreement with some agency, and it isn't uncommon for someone to want police protection outside the agency or that sort of thing. They will furnish a fire truck, they will pay for the policeman, and that sort of thing. This would permit the non-home rule units to go ahead and make that sort of agreement, and unless the Legislature has prohibited, has regulated it, they could go ahead and do it."

I, therefore, am of the opinion that DuPage County can contract with a home owners association located in an unincorporated area of the county to provide police protection for that area.

Very truly yours,

A T T O R N E Y   G E N E R A L