



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

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FILE NO. 97-021

TOWNSHIPS:  
Disposal of Property Subsequent  
to a Successful Referendum to  
Discontinue Township Government;  
Effects of the Property Tax  
Extension Limitation Law

The Honorable Gary W. Pack  
State's Attorney, McHenry County  
McHenry County Government Center  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire: 1) whether another unit of local government would be obligated to assume responsibility for the care and maintenance of the township road system if the voters of a county approve a referendum for the discontinuance of township organization; and 2) if township organization is discontinued in a county that must meet the limitations of the Property Tax Extension Limitation Law (35 ILCS 200/18-185 et seq. (West 1996)), whether an entity which becomes responsible for the care and maintenance of the township roads will be permitted to increase its tax levy for those purposes.

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For the reasons hereinafter stated, it is my opinion that upon the discontinuance of township organization, the responsibility for the care and maintenance of former township roads will revert to the county. Further, it is my opinion that to the extent that the obligation for maintenance of the township road system is transferred to a county that must satisfy the provisions of the Property Tax Extension Limitation Law, the county's aggregate extension base may be increased to include that portion of the townships' aggregate extension base that funded the township roads.

McHenry County is currently under township organization. Petitions have been filed, however, seeking a referendum on the question of whether to discontinue township organization. Your first question concerns which governmental entity, if any, would assume jurisdiction over township roads if township organization is discontinued.

The discontinuance of township organization in a county is authorized by article VII, section 5 of the Illinois Constitution of 1970, as implemented by the provisions of article 25 of the Township Code (60 ILCS 1/25-5 et seq. (West 1996)). Sections 25-10 and 25-25 of the Code (60 ILCS 1/25-10 (West 1996); 60 ILCS 1/25-25 (West 1996)) provide, respectively:

"If it appears by the returns of the election that a majority of the votes in at least three-fourths of the townships, containing at least a majority of the population in the county, cast on the question of the

continuance of township organization at the election are against the continuance of township organization, then township organization shall cease in the county as soon as a county board is elected and qualified. All laws relating to counties not under township organization shall be applicable to the county, the same as if township organization had never been adopted in it." (Emphasis added.)

"When township organization is discontinued in any county, the records of the several townships shall be deposited in the county clerk's office. The county commissioners of the county may close up all unfinished business of the several townships and sell and dispose of any of the property belonging to a township for the benefit of the inhabitants of the township, as fully as might have been done by the townships themselves. The county commissioners may pay all the indebtedness of any township existing at the time of the discontinuance of township organization and cause the amount of the indebtedness, or so much as may be necessary, to be levied upon the property of the township." (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Robinson (1996), 172 Ill. 2d 452, 457.) Legislative intent is best evidenced by the language used in the statute. (People v. Thomas (1996), 171 Ill. 2d 207, 221.) Where the statutory language is clear and unambiguous, it must be given effect as written. Barnett v. Zion Park Dist. (1996), 171 Ill. 2d 378, 389.

Under section 25-25 of the Township Code, the authority to wind up the business of discontinued townships and to liqui-

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date the property thereof has been delegated to the county. There is no statutory direction, however, regarding the assumption of responsibility for maintenance of the former township road system. Section 25-10 of the Code provides that "[a]ll laws relating to counties not under township organization shall be applicable to the county, the same as if township organization had never been adopted in it." Therefore, in order to resolve this question, reference must be made to those statutes which address the care and maintenance of rural highways in counties not under township organization.

The Illinois Highway Code (605 ILCS 5/1-101 et seq. (West 1996)) recognizes five types of highways: State highways, county highways, township roads, district roads and municipal streets. (605 ILCS 5/2-202 through 2-207 (West 1996).) "Township roads" are defined to include all rural roads to which the Highway Code applies, which are not part of the State highway system, county highway system or municipal street system, and which are "\* \* \* under the immediate jurisdiction of a road district comprised of a single township in a county having township organization." (605 ILCS 5/2-103 and 2-205 (West 1996).) Similarly, "district roads" are defined to include all rural roads to which the Highway Code applies which are not part of the State highway system, county highway system or municipal street system. District roads, however, are "\* \* \* under the immediate jurisdiction of a road district other than a road

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district comprised of a single township in a county having township organization." (605 ILCS 5/2-206 (West 1996).)

Article 6 of the Illinois Highway Code (605 ILCS 5/6-101 et seq. (West 1996)) governs the administration of township and district road systems. Section 6-103 of the Code (605 ILCS 5/6-103 (West 1996)) provides:

"In counties not under township organization the road districts in existence under the provisions of law immediately prior to the effective date of this Code shall be continued in existence until the same shall be altered in this manner provided in Sections 6-104, 6-105, or 6-111 of this Code or as otherwise provided by law." (Emphasis added.)

Under the language quoted above, it is clear that in counties not under township organization, road districts ordinarily have the responsibility for maintenance of public roads which are not part of the State, county or a municipal road system. The Illinois Highway Code was enacted in 1959. (See 1959 Ill. Laws 203.) Under the statutory language in effect at that time, the county board of a county not under township organization was required to undertake an initial division of the county into road districts, if road districts were not already laid out, and to conduct elections related thereto. (See Ill. Rev. Stat. 1957, ch. 121, pars. 47 and 50.) With the enactment of the Illinois Highway Code, however, the county commissioners' authority to undertake the division of a county into road districts was repealed, presumably because all counties not under

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township organization had been so divided by that time. Since McHenry County, being organized into townships, was not divided into road districts prior to the enactment of the Illinois Highway Code in 1959, there are no road districts which could assume the care and maintenance of township roads. Thus, it must be determined to which unit of government, if any, the responsibility for the care and maintenance of township roads will pass.

An examination of early Illinois law reveals that, initially, the county commissioners' courts of the several counties were "\* \* \* vested with general superintendency over the public roads within their respective counties." (1827 Ill. Laws 340; 1841 Ill. Laws 233.) The county commissioners' court was superseded by the county court which "\* \* \* exercise[d] and possess[ed] all the power, jurisdiction, and authority heretofore conferred by law on the county commissioners' court of this state \* \* \*" (1849 Ill. Laws 65), including general superintendence over the public roads within the county. (1873 Ill. Laws 156-57.) Subsequently, the General Assembly authorized the county boards of the several counties to divide the counties into road districts (1887 Ill. Laws 269-70) and to conduct elections for commissioners of highways who would then have "\* \* \* charge of the roads and bridges of their respective districts and the duty to keep the same in repair." (1887 Ill. Laws 275.)

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It is clear that the general supervision of local public roads in this State was originally vested in the county. Although counties have subsequently been relieved of the responsibility for superintendence of some rural highways by virtue of the creation of townships and road districts, when those entities cease to exist, and no provision has been made in the law for the transfer of those responsibilities, they must necessarily revert to the county. There is no other general purpose unit of local government or special district to which the responsibility for a county-wide road system could effectively be transferred. Public necessity requires that the obligation be performed. Consequently, it is my opinion that, as a matter of law, the responsibility for the care and maintenance of the former township roads will pass to the county upon the discontinuance of township organization.

In this regard, I would note, however, that there is currently legislation pending before the General Assembly that, if enacted, could significantly affect the resolution of this issue. House Bill 1448 would amend section 6-103 of the Illinois Highway Code to provide that "\* \* \* the road districts in existence immediately before the referendum to discontinue township organization shall be continued until altered as provided in section 6-104, 6-105 or 6-111 or as otherwise provided by law." If that bill is passed and signed into law in its current form, then no transfer of responsibility for roads would be necessary.

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You have also inquired whether, upon the discontinuance of township organization, a county which is subject to the Property Tax Extension Limitation Law, and which assumes responsibility for former township roads, may increase the taxes it levies in excess of the limitations imposed by the Law to a rate which would provide adequately for the care and maintenance of those roads.

The Property Tax Extension Limitation Law (hereinafter referred to as "Tax Limitation Law") limits increases in tax extensions and amounts levied by taxing districts in certain counties. (35 ILCS 200/18-195 (West 1996).) Taxing districts which are subject to the Tax Limitation Law include non-home-rule units of local government, such as townships and counties, which possess the authority to levy taxes. (35 ILCS 200/1-50 (West 1996); 35 ILCS 200/18-185 (West 1996).) Counties in which the limits are automatically applicable include those that are contiguous to a county of 3,000,000 or more inhabitants; thus, units of local government in McHenry County, including the county, are subject to the Tax Limitation Law. (35 ILCS 200/18-185 (West 1996).)

Under the provisions of the Tax Limitation Law, tax extensions may ordinarily be increased over the previous year's by no more than 5% or the percentage increase in the Consumer Price Index, whichever is less, without referendum. (35 ILCS 200/18-205 (West 1996).) The limiting rate is a fraction, with a



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numerator consisting of the last preceding aggregate extension base multiplied by an amount equal to one plus the extension limitation. The denominator consists of the current year's equalized assessed value, without including new property or the recovered tax increment value. (35 ILCS 200/18-185 (West 1996).)

Section 18-215 of the Tax Limitation Law (35 ILCS 200/18-215 (West 1996)) expressly authorizes a taxing district to increase its aggregate extension base subsequent to a transfer of services between taxing districts:


"\* \* \* When a service performed by one taxing district is transferred to another taxing district, that part of the aggregate extension base for that purpose shall be transferred and added to the aggregate extension base of the transferee taxing district for purposes of this Law and shall be deducted from the aggregate extension base of the transferor taxing district."

Clearly, the language of section 18-215 contemplates that a transfer of services among taxing districts may occur, and provides a mechanism for meeting the additional costs incurred by a transferee taxing district subsequent to a transfer of services while keeping the increase in taxes within the provisions of the Tax Limitation Law. As previously noted, upon the discontinuance of township organization, the care and maintenance of township roads is transferred to the county as a matter of law. Therefore, it is my opinion that in such circumstances, the county's aggregate extension base may be increased pursuant to section 18-215 of the Tax Limitation Law to include that portion of each

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township's aggregate extension base that funded the care and maintenance of township roads.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is written in a cursive style with a long, sweeping tail on the "y".

JAMES E. RYAN  
Attorney General