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FILE NO. S-1302

COUNTIES:
Whether a County Government
May Deed Certain Real Estate
By a Warranty Deed

Honorable Thomas H. Sutton
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Carmi, Illinois 62821

Dear Mr. Sutton:

I have your letter wherein you request an opinion as to whether a county may deed certain real estate by a warranty deed rather than a quit claim deed. In order to answer your inquiry it is helpful to first set forth the meaning of these two types of deeds so that we may discern what would be required of the county in each case. A quit claim deed is a deed of conveyance operating by way of release; that is, intended to pass any title, interest or claim which

the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title. (Black's Law Dictionary, 4th Ed. Rev.) Generally a quit claim deed will convey whatever title or interest the grantor may have in the land at the time it is given, and only such title or interest. Bryant v. Lakeside Galleries (1949), 402 Ill. 466.

A warranty deed is one which contains a covenant of warranty, which is an assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title. (Black's Law Dictionary, 4th Ed. Rev.) In Biwer v. Martin (1920), 294 Ill. 488 at 496-497, the Illinois Supreme Court said that a covenant of warranty constitutes an engagement that the covenantor and his heirs shall be barred from ever claiming the estate, and shall undertake to defend it when assailed by a paramount title. Covenants of warranty of a grantor place upon him and his successors in title the burden of protecting his covenantee in the estate granted.

As you state in your letter Illinois law does not specify under which type of deed a county may convey its real estate. The statutes which confer power on the county

to convey title to real estate are section 16 of "AN ACT concerning conveyances" (Ill. Rev. Stat. 1975, ch. 30, par. 15) and section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 303), which read as follows:

> "§ 15. The county board of any county may authorize any officer or member of its board to execute and deliver all deeds, grants, conveyances and other instruments in writing, which may become necessary in selling, transferring or conveying any real estate belonging to its county and such deeds, grants, conveyances and other instruments, if made without fraud or collusion, shall be obligatory upon the county to all intents and purposes."
>
> " § 303. Each county shall have power —
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> * * *
>
> Second — To sell and convey or lease any real or personal estate owned by the county.
>
> * * * "

In my opinion a county does not have the power to convey land by warranty deed. It is a well established rule that the powers of the multifarious units of local government in our State, including counties, are not to be enlarged by liberally construing the statutory grant, but, quite to the contrary, are to be strictly construed against the governmental entity. (Arms v. City of Chicago (1924), 314 Ill. 316,

145 N.E. 407; Connelly v. Clark County (1973), 16 Ill. App. 3d 947.) A county is a mere creature of the State and can exercise only the powers expressly delegated by the legislature or those that arise by necessary implication from expressly granted powers. (Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 187 N.E. 2d 261.) This necessarily implied power has been interpreted to mean that which is essential to the accomplishment of the statute's declared object and purpose - not simply convenient, but indispensable. Merrill v. City of Wheaton (1942), 379 Ill. 508, 41 N.E. 2d 504.

Although this precise issue has not been decided in Illinois, decisions from other States support my conclusion that power in a county to sell and convey lands does not include the power to execute a warranty deed therefor. In Henry v. Atkison (1872), 50 Mo. 266, the court held that the county commissioner had the statutory power only to convey the interest of the county and not to make warranties. The court went on to say that such a conveyance can only be a quit claim deed; and a covenant of warranty in the deed would not bind the county.

In Harrison v. Palo Alto County (1898), 104 Iowa

383, 73 N.W. 872, the Supreme Court of Iowa noted that when there is no statute giving the county power to execute a deed with covenants of warranty, if it has such authority, then it is in virtue of its implied power. The court held that such power is not necessary to make the conveyance available, nor is it essential to the purposes and objects of the corporation. A conveyance or assurance is good and perfect without either a warranty or a personal covenant. And, as the powers granted to or implied of a municipal corporation are only such as are necessary to make those expressly granted available, it seems quite clear that it has no authority to execute deeds with a covenant of warranty.

Keeping in mind the rule that county powers are strictly construed and doubts are resolved against their existence, the power to make a warranty deed is not an express grant of power. Such power is not necessarily or fairly implied in or incident to the power to convey land that the statute expressly grants. And, it cannot reasonably be argued the power to convey by warranty deed is indispensable to the declared objects and purposes of the county. A quit

claim deed is equally as effectual to pass title as a warranty deed with full covenants. Favata v. Mercer (1951), 409 Ill. 271.

Very truly yours,

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