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FILE NO. S-885

**REAL ESTATE:**  
Transfer of Real Estate  
From Hospital District to  
County

Honorable Henry D. Sintzenich  
State's Attorney  
McDonough County  
Macomb, Illinois 61455

Dear Mr. Sintzenich:

I have your letter wherein you state:

"I request your opinion on the following:

McDonough County Board wishes to accept a parcel of land from our District Hospital which is organized under the Hospital District Law, Chapter 23, Section 1257 et. seq. Can the District Hospital deed this parcel of land to McDonough County in fee simple with a reverter clause?"

It is my understanding that the hospital district wishes to transfer to McDonough County a parcel of land

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located near the hospital. In consideration for this parcel of land, the county will give the hospital district \$1 and a promise to construct, operate and maintain a nursing home on the land pursuant to the provisions of the County Home Act. Ill. Rev. Stat. 1973, ch. 34, pars. 5361 et seq.

McDonough County is not a home rule unit. Non-home rule counties have only those powers specifically granted to them by the Constitution or by law (Ill. Const., art. VII, sec. 7) plus those powers that may be implied as necessary to carry out these specific powers. (Heidenreich v. Ronske, 26 Ill. 2d 360.) McDonough County has the statutory power to construct, operate and maintain a county nursing home. Ill. Rev. Stat. 1973, ch. 34, pars. 5361 et seq.

A hospital district is organized pursuant to the provisions of "The Hospital District Law" (Ill. Rev. Stat. 1973, ch. 23, pars. 1251 et seq.) Such hospital districts are special districts within the meaning of the Constitution of 1970. (Op. Atty. Gen. S-601 (June 27, 1973).) A special

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district has only those powers granted to it by the State Constitution or by law. Ill. Const., art. VII, sec. 8.

"The Hospital District Law" expressly empowers a hospital district to acquire real estate. (Ill. Rev. Stat. 1973, ch. 23, par. 1265(2).) However, the Law does not expressly empower a hospital district to sell or otherwise convey its real property. It is, however, unnecessary to determine whether a hospital district has the implied power to sell or otherwise convey its real estate because I am of the opinion that the proposed conveyance of the real estate to McDonough County in exchange for the county's construction, operation and maintenance of a county nursing home is authorized by section 10(a) of article VII of the Illinois Constitution of 1970, section 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, par. 745) and "AN ACT in relation to the transfer of real estate owned by municipalities. Ill. Rev. Stat. 1973, ch. 30, pars. 156 et seq.

Said section 10(a) reads as follows:

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"(a) 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 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. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities."

It should be noted that special districts are units of local government. Ill. Const., art. VII, sec. 1.

Said section 5 reads as follows:

"§ 5. Intergovernmental contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

It should be noted that both hospital districts and counties are "public agencies" within the meaning of the Intergovernmental Cooperation Act. Ill. Rev. Stat. 1973, ch. 127, par. 742.

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The object and purpose of intergovernmental cooperation is summed up in the report of the Committee on Local Government to the 6th Illinois Constitutional Convention (VII Committee Proposals, 1591, 1752) as follows:

"\* \* \* The committee does not view intergovernmental cooperation as a panacea. Rather, it is a means by which local units in urban or rural settings may work together in seeking a common goal: the desired level of service to their citizens at the lowest possible unit cost."

Section 10(a) of article VII authorizes a hospital district to contract to obtain services and to use its resources to pay costs related to intergovernmental activities. It is my understanding that the boundaries of the hospital district are coterminous with those of McDonough County, therefore, both units of local government serve the same constituency. Here, the hospital district and the county are contracting to provide the delivery of nursing home services to the constituents of both units and each participating unit of local government has the statutory authority to undertake the particular services, powers or functions to which the

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particular intergovernmental contract pertains.

McDonough County has the power to operate a nursing home. (Ill. Rev. Stat. 1973, ch. 34, pars. 5361 et seq.) Such a nursing home must be licensed pursuant to the provisions of the Nursing Homes, Sheltered Care Homes, and Homes for the Aged Act. Ill. Rev. Stat. 1973, ch. 111 1/2, pars. 35.16 et seq.

This Act delineates the salient features of a nursing home. Section 1 of the Act (Ill. Rev. Stat. 1973, ch. 111 1/2, par. 35.16) defines a nursing home as follows:

"Nursing Home' means a private home, institution, building, residence, or other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to 'The County Home Act', approved April 11, 1967, as now or hereafter amended, or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, maintenance, personal care, or nursing for 3 or more persons, not related to the applicant or owner by blood or marriage, or any similar facility in which maintenance is provided to 3 or more persons who by reason of illness or physical infirmity require personal care or nursing."

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Thus, the main ingredients of a nursing home are a facility that delivers "maintenance", "personal care" and "nursing" to the ill or infirm. "Maintenance", "personal care" and "nursing" are defined by section 1 as follows:

"'Maintenance' means food, shelter and laundry.

'Personal care' means assistance with meals, dressing, movement, bathing or other personal needs, or general supervision and oversight of the physical and mental well-being of an individual, exclusive of nursing, who, because of age, physical or mental disability, emotional or behavior disorder, or mental retardation is incapable of maintaining a private, independent residence or who is incapable of managing his person whether or not a conservator has been appointed for such individual.

'Nursing' means professional nursing or practical nursing, as these terms are defined in Section 4 of 'The Illinois Nursing Act', approved June 14, 1951, as heretofore or hereafter amended, for sick or infirm persons who are under the care and supervision of licensed medical practitioners."

Paragraphs (a) and (c) of section 3 of the Hospital District Law (Ill. Rev. Stat. 1973, ch. 23, par. 1253)

respectively define the terms "hospital" and "facilities"

as follows:

"§ 3. (a) 'Hospital' means any hospital for in-patient and out-patient medical or surgical care of persons in need thereof.

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(c) 'Facilities' means and includes real estate and any and all forms of tangible and intangible personal property and services used or useful as an aid, or constituting an advantage or convenience to the safe and efficient operation or maintenance of a public hospital."

Some of the relevant powers of a hospital district may be found at section 15 of the Hospital District Law (Ill. Rev. Stat. 1973, ch. 23, par. 1265) which provides in pertinent part as follows:

"§ 15. A Hospital District shall constitute a municipal corporation and body politic separate and apart from any other municipality, the State of Illinois or any other public or governmental agency and shall have and exercise the following governmental powers, and all other powers incidental, necessary, convenient, or desirable to carry out and effectuate such express powers.

1. To establish and maintain a hospital and hospital facilities within its corporate limits, and to construct, acquire, develop, expand, extend and improve any such hospital or hospital facility.

2. To acquire land in fee simple, rights in land and easements upon, over or across land and leasehold interests in land and tangible and intangible personal property used or useful for the location, establishment, maintenance, development, expansion, extension or improvement of any such hospital or hospital facility. Such acquisition



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may be by dedication, purchase, gift, agreement, lease, use or adverse possession or by condemnation.

3. To operate, maintain and manage such hospital and hospital facility, and to make and enter into contracts for the use, operation or management of and to provide rules and regulations for the operation, management or use of such hospital or hospital facility.

4. To fix, charge and collect reasonable fees and compensation for the use or occupancy of such hospital or any part thereof, or any hospital facility, and for nursing care, medicine, attendance, or other services furnished by such hospital or hospital facilities, according to the rules and regulations prescribed by the board from time to time.

\* \* \*

Although a hospital district is not specifically empowered to deliver "maintenance", "personal care", and "nursing" to the ill or infirm, it is inherent in the operation of a hospital that these services be performed. These services are obviously essential to the delivery of medical or surgical care to those in need thereof.

The Illinois Department of Public Health has recognized the power of hospital districts to operate nursing homes. The Department has licensed at least four

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hospital districts to operate nursing homes. Such a construction of the statutory powers and duties of hospital districts by a department of State government must be considered and given weight. (Mississippi River Fuel Corp. v. Illinois Commerce Commission, 1 Ill. 2d 509, 514.)

Such administrative construction of statutes will usually be adopted by courts, (Chicago Title & Trust Co. v. Central Republic Trust Co., 299 Ill. App. 483, 496), particularly when such contemporaneous construction is consistent, uniform and long continued. McNely v. Bd. of Ed., 9 Ill. 2d 143, 150.

I am of the opinion that a hospital district may construct, operate and maintain a nursing home.

It need not be decided whether section 10(a) of article VII of the Illinois Constitution of 1970 and section 5 of the Intergovernmental Cooperation Act authorize the hospital district to transfer title to real property subject to a possibility of reverter. The hospital district draws this power from "AN ACT in relation to the transfer of real estate owned by municipalities" (Ill. Rev. Stat. 1973, ch. 30, pars. 156 et seq.) Said Act authorizes a "municipality" to transfer real

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estate to another "municipality". The terms "transferor municipality", "transferee municipality" and "municipality" are respectively defined at section 1 of the Act (Ill. Rev. Stat. 1973, ch. 30, par. 156) as follows:

"§1. When used in this Act:

(a) The term 'transferor municipality' shall mean a municipal corporation transferring real estate or any interest therein, under the provisions of this Act.

(b) The term 'transferee municipality' shall mean a municipal corporation receiving a transfer of real estate or any interest therein under provisions of this Act.

(c) The term 'municipality' whether used by itself or in conjunction with other words, as in (a) or (b) above, shall mean and include any municipal corporation or political subdivision organized and existing under the laws of the State of Illinois and including, but without limitation, any city, village, or incorporated town, whether organized under a special charter or under the General Act, or whether operating under the commission or managerial form of government, county, school districts, boards of education, sanitary district or sanitary district trustees, forest preserve district or forest preserve district commissioner, park district or park commissioners, airport authority and township."

A county is specifically defined to be a "municipality" within the meaning of the Act. Section 15 of "The Hospital

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District Law" (Ill. Rev. Stat. 1973, ch. 23, par. 1265) describes a hospital district as a "municipal corporation and body politic separate and apart from any other municipality, the State of Illinois or any other public or governmental agency \* \* \*." This description of a hospital district falls within the definition of a "municipality". Thus, a hospital district may transfer real estate to a county, provided certain prerequisites are met.

One prerequisite to the transfer of real estate between "municipalities" is the adoption of an ordinance by the "transferee municipality" declaring that it is necessary or convenient for it to use, occupy or improve real estate that is held by the "transferor municipality" in the making of any public improvement or for any public purpose. Thus, McDonough County desires to occupy and improve real estate by building a county nursing home. It need not be determined whether the construction, operation and maintenance of a county nursing home is a public improvement for I am of the opinion that such an undertaking falls within the meaning of the "public purpose" doctrine.

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Section 1(a) of article VIII of the Illinois Constitution of 1970 provides: "Public funds, property or credit shall be used only for public purposes."

"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, sec. 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

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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", (Frohmler 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,

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(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.

As mentioned earlier, McDonough County has the statutory power to construct, operate and maintain a county nursing home. I am of the opinion that such an undertaking is for a public purpose within the meaning of section 1(a) of article VIII of the Illinois Constitution of 1970 and section 2 of "AN ACT in relation to the transfer of real

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estate owned by municipalities". Ill. Rev. Stat. 1973, ch. 30, par. 157.

Another prerequisite is that the territory of the "transferee municipality" must be wholly within, coextensive with, or partly within and partly without the corporate limits of the "transferor municipality". It is my understanding that the boundaries of the hospital district are coextensive with that of McDonough County, thus, the prerequisite is satisfied.

Once the ordinance has been adopted by the "transferee municipality", the "transferor municipality" has the power to convey the real estate. Such conveyance must be authorized by resolution which must be passed by two-thirds of the corporate authorities of the "transferor municipality" then holding office.

If the real estate to be transferred is held by the "transferor municipality" subject to a restriction on the use thereof, then before conveying the property, the "transferor municipality" must either secure a release of the



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restriction from its grantor, heirs, successors, and assigns or must file a petition in the circuit court requesting the removal of the restriction. Upon the hearing of such a petition, the circuit court has power to determine the actual damage sustained by the predecessors in title, if any, by reason of the release of the restriction and to order the payment of the same to the grantor or his successors in interest.

You have inquired as to whether the hospital district may convey the real estate to the county in fee simple with a reverter clause. You should examine the provisions of "AN ACT relating to rights of entry or reentry for breach of condition subsequent and possibilities of reverter" (Ill. Rev. Stat. 1973, ch. 30, pars. 37b et seq.) Section 4 of said Act (Ill. Rev. Stat. 1973, ch. 30, par. 37e) limits the duration of a right of entry or reentry for breach of condition subsequent and a possibility of reverter to 40 years.

In deciding if "AN ACT in relation to the transfer

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of real estate owned by municipalities" authorizes the "transferor municipality" to retain a possibility of reverter and the "transferee municipality" to accept a fee simple determinable estate subject to a possibility of reverter, one must elucidate the intent of the legislature from the entire provisions of the Act. (Pliakos v. Ill. Liquor Comm., 11 Ill. 2d 456.) In other words, the legislative intent ought to be gathered from a construction of all the various parts of the Act. (Peacock v. Judges Retirement System of Illinois, 10 Ill. 2d 498.) For example, paragraph (a) of section 2 of the Act (Ill. Rev. Stat. 1973, ch. 30, par. 157) grants to the "transferor municipality" "\* \* \* the power to transfer all the right, title and interest held by it immediately prior to such transfer, in and to such real estate, \* \* \* upon such terms as may be agreed upon by the corporate authorities of both municipalities \* \* \*" (emphasis added.) Paragraph (c) of section 2 provides that upon the payment of compensation awarded by the court to the owners of any restriction on the real estate "\* \* \* the

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transferor municipality shall grant and convey the said real estate to the transferee municipality upon the terms and conditions agreed upon by the said municipalities \* \* \*." (emphasis added.) Section 3.1 of the Act (Ill. Rev. Stat. 1973, ch. 30, par. 158.1) authorizes the "transferor municipality" to lease its land to the "transferee municipality" for any term not to exceed 20 years \* \* \* upon such terms and conditions and for such uses as may be agreed upon by the corporate authorities of both the transferor and transferee municipalities \* \* \*." (emphasis added.) Section 4 of the Act (Ill. Rev. Stat. 1973, ch. 30, par. 158a) authorizes a municipality to transfer real estate to the State of Illinois \* \* \* upon such terms and conditions as may be agreed upon by the transferor municipality and the State of Illinois \* \* \*." (emphasis added.)

I am of the opinion that the foregoing provisions of "AN ACT in relation to the transfer of real estate owned by municipalities" elucidate the intent of the legislature to authorize the transferring of real estate by a hospital district to a county in fee simple with a possibility of

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reverter if the county ceases to use the real estate for a county nursing home. Furthermore, I am of the opinion that this in no way conflicts with that portion of paragraph (1) of section 2 of the County Home Act (Ill. Rev. Stat. 1973, ch. 34, par. 5362) that empowers a county "\* \* \* to acquire in the name of the county by purchase, grant, gift or devise a suitable tract or tracts of land upon which to erect and maintain the home \* \* \*." The fact that the hospital district will retain a possibility of reverter presents no mischievous consequence and, in fact, is in harmony with the provisions of paragraph 2 of section 15 of "The Hospital District Law" (Ill. Rev. Stat. 1973, ch. 23, par. 1265) pertaining to the acquisition of land, namely that portion authorizing a hospital district "\* \* \* to acquire land in fee simple, rights in land and easements upon, over or across land and lease all interests in land \* \* \*." (emphasis added.)

In direct answer to your question, I am of the opinion that the hospital district may pursuant to the provisions of section 10(a) of article VII of the Illinois

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Constitution of 1970, section 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, par. 745) and "AN ACT in relation to the transfer of real estate owned by municipalities" (Ill. Rev. Stat. 1973, ch. 30, pars. 156 et seq.) enter into a formal intergovernmental cooperation agreement with McDonough County whereby the hospital district agrees to convey to the county real property subject to a possibility of reverter in exchange for \$1 and a promise by the county to operate, construct and maintain a county nursing home.

Very truly yours,

A T T O R N E Y   G E N E R A L