



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

January 7, 1976

FILE NO. S-1029

**CONSTITUTION:**  
**Intergovernmental Cooperation**

Honorable William J. Cowlin  
State's Attorney of McHenry County  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Cowlin:

I have your letter wherein you state that the city of Crystal Lake desires to expand its zoning authority outside the city limits to the area within one and one-half miles beyond the city limits. You specifically request my advice as to whether McHenry County and the city of Crystal Lake may enter into an intergovernmental cooperation agreement so providing pursuant to either section 10 of article VII of the Illinois Constitution of 1970 or the Illinois Intergovernmental Cooperation

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Act. Ill. Rev. Stat. 1973, ch. 127, pars. 741 et seq.

Section 10(a) of article VII of the Illinois Constitution provides:

"(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 inter-governmental activities." (emphasis added.)

Sections 3 and 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, pars. 743 and 745) provide as follows:

"Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State, may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other State or of the United States to the extent that the laws of such other State or of the United States

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do not prohibit joint exercise or enjoyment. \* \* \*

"Any one or more public agencies may contract with any one or more 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 contracts shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

Irrespective of section 10 of article VII and the Intergovernmental Cooperation Act, section 11-13-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1) confers extraterritorial zoning powers upon Illinois municipalities in certain instances. Section 11-13-1 states:

"The powers enumerated (zoning) may be exercised within the corporate limits or within continuous territory not more than one and one-half (1-1/2) miles beyond the corporate limits and not included within any municipality."

However, section 11-13-1 also provides:

"No municipality shall exercise any powers set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted 'AN ACT in relation to county zoning', approved

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June 12, 1935 as amended." (Ill. Rev. Stat. 1973, ch. 34, pars. 3151 et seq.)

Section 1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1973, ch. 34, par. 3151) empowers a county to enact zoning ordinances for the entire county outside the limits of cities, villages and incorporated towns which have municipal zoning ordinances in effect. Accordingly, it has been held that the zoning ordinances of a county established pursuant to that statute take precedence over and supersede zoning ordinances, regulations and powers of the city as to land lying outside the city limits, but within one and one-half miles of the boundaries of the city. (See, e.g., City of Canton v. County of Fulton, 11 Ill. App. 3d 171; Village of Mt. Prospect v. County of Cook, 113 Ill. App. 2d 336.) Thus, the city of Crystal Lake has a statutorily conferred power to zone the area one and one-half miles outside of its boundaries, so long as McHenry County has not elected to proceed under "AN ACT in relation to county zoning". Ill. Rev. Stat. 1973, ch. 34, pars. 3151 et seq.

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On the other hand, if McHenry County has elected to proceed under section 1 of "AN ACT in relation to county zoning", it is my opinion that the legislature has erected a statutory prohibition preventing the city of Crystal Lake from exercising zoning authority outside of its boundaries, irrespective of section 10 of article VII of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act. (Ill. Rev. Stat. 1973, ch. 127, pars. 741 et seq.) I am advised that McHenry County has adopted an ordinance adopting "AN ACT in relation to county zoning." Ill. Rev. Stat. 1973, ch. 34, pars 3151 et seq.

With respect to section 10 of article VII of the Constitution, it is clear that the 1970 Constitutional Convention intended section 10 to be a self-executing grant of power to units of local government to cooperate, to make agreements, and to associate. (See the comments of Delegate Parkhurst and Delegate Stahl, IV Verbatim Transcripts 3421.) However, it is equally clear from the language of section 10(a) that this power does not exist if the joint agreement or act has been prohibited by the General Assembly. As Delegate Parkhurst stated:

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"It is a provision that says 'you can do it unless the General Assembly says you can't.'" (IV Verbatim Transcripts 3426.)

From a careful reading of the debates of the Constitutional Convention and in light of the ordinary and natural meaning which the words of the prohibitory clause of section 10(a) of article VII require, I find no indication that the delegates to the Convention intended the limitation to apply only to laws and ordinances enacted subsequent to the adoption of the new Constitution. Laws and ordinances adopted earlier may provide the prohibition engrafted by the Constitution on the otherwise self-executing provisions of section 10(a).

In this instance the legislature has acted to preclude Crystal Lake from zoning outside its boundaries. Section 11-13-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1) prevents the city of Crystal Lake from exercising zoning authority outside its boundaries if McHenry County has elected to adopt the county zoning ordinance above mentioned. The clear intent of section 11-13-1 is to preclude municipal

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zoning outside its boundaries in this instance. Accordingly, the county cannot enter into an intergovernmental cooperation agreement under section 10 of article VII to transfer zoning authority to the city of Crystal Lake since such an arrangement is specifically precluded by statute. Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1.

In my opinion the provisions of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1973, ch. 127, pars. 741 et seq.) do not require a different conclusion from that which I have just expressed. Those provisions must be read consistently with the limitations pertaining to intergovernmental agreements and intergovernmental cooperation found in section 10(a) of article VII of the Constitution and the statute must be read consistently with the Constitution. Thus, the Act may not be construed as permitting a transfer of zoning power by McHenry County to the city of Crystal Lake exercisable within the one and one-half mile zone outside of the city limits when such a transfer would be in contravention of an explicit and existing statutory prohibition

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and therefore, in contravention of section 10(a) of article VII of the Illinois Constitution.

This opinion is limited to the facts and issues of this instance and should not be construed as defining or interpreting the sweep of section 10(a) of article VII in other factual situations. Further this opinion is not intended to be an interpretation of the scope of the Intergovernmental Cooperation Act in situations not involving statutorily forbidden action.

To summarize, the statutory prohibition contained in section 11-13-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1) prevents the city and county from agreeing to transfer zoning authority pursuant to section 10 of article VII of the Illinois Constitution. Further, the proposed zoning authorization by McHenry County is not permitted by the Intergovernmental Cooperation Act since that Act cannot authorize by agreements contrary to constitutional constraint, the performance of any function expressly forbidden by law. For these reasons, it is my opinion that the city of Crystal Lake may not contract or agree with McHenry County to obtain zoning authority



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over the territory within one and one-half miles outside the city's borders until such time as the General Assembly removes the present prohibition in section 11-13-1 mentioned above.

Very truly yours,

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