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FILE NO. S-951

CONSTITUTION:
Special Service Area Taxation

Honorable Dale A. Allison, Jr.
State's Attorney
Wabash County
One Twenty East Fourth Street
Mt. Carmel, Illinois 62863

Dear Mr. Allison:

I have your letter wherein you state as follows:

"The County Board of Wabash County has been approached by a group of interested citizens who have proposed the formation of a fire district and emergency ambulance service district pursuant to the special services areas of Chapter 120, Section 1301 et sequi.

In Chapter 120, Section 1302, special services is defined as meaning 'all forms of services pertaining to the government and affairs of the municipality or county, including but not limited to improvements permissible under Article 9 of the Illinois Municipal Code'. I have suggested to the County Board that something might be able to be worked out on the ambulance service but that it is not a county responsibility to provide a Fire Protection District

since there were statutory provisions for that.

> The County Board has asked that I ask your opinion as to what specific matters might be included in the definition of 'special services' as they feel various requests may be made upon them to establish special service areas with regard to drainage, conservation, recreation, and if some representative list under the definition of 'special services' was made available to them they would better be able to respond to those requests."

Wabash County is not a home rule unit.

Part (2) of section 6(1) and part (6) of section 7 of article VII of the Illinois Constitution of 1970 authorize home rule units and counties and municipalities which are not home rule units "to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas." This method of taxation was referred to by the committee on local government and in the convention debates as "differential taxation." (VII, Record of Proceedings, p. 1662; IV, Record of Proceedings, p. 3145 - 3148.) The constitutional permission of special service area taxation was a departure from the requirement of uniformity imposed by the Illinois Constitution of 1870 (Ill. Const., art. IX, sec. 9 and 10 [1870]) and its purpose was to authorize counties and municipalities to tax different areas within their boundaries at different rates

as the services furnished to those areas required. Sections 9 and 10 of article IX of the Illinois Constitution of 1870 did not permit such differential taxation but required that the property within the municipal corporation be taxed uniformly. It must be emphasized that part (2) of section 6(1) and part (6) of section 7 of article VII of the Illinois Constitution of 1970 only authorized such differential taxation; neither provision authorized any specific, governmental services to be financed by such taxation.

That legislation was required to implement the special service area taxation powers now possessed by counties and municipalities was made clear in Oak Park Fed. S. & L. v. Village of Oak Park, 54 Ill. 2d 200. Section 1 of "AN ACT to provide the manner of levying or imposing taxes for the provision of special services to areas within the boundaries of home rule units and non-home rule municipalities and counties" (Ill. Rev. Stat. 1973, ch. 120, par. 1301, hereafter Special Service Area Tax Act) reveals that it is the object and purpose of this Act to implement both part (2) of section 6(1) and part (6) of section 7 of article VII.

You inquire as to what government services or activities may be financed by a special service area tax.

Our constitution outlines the basic distribution of power to home rule units and to counties and municipalities which are not home rule units. Counties and municipalities which are home rule units derive broad, legislative powers from section 6(a) of article VII of the Illinois Constitution which states, in part:

> "Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."

Counties and municipalities which are not home rule units have only powers granted to them by law plus those specific, constitutional powers enumerated at section 7 of article VII of the Illinois Constitution of 1970.

Section 2 of the Special Service Area Tax Act (Ill. Rev. Stat. 1973, ch. 120, par. 1302) is most important for it indicates what special services may be financed by this special form of tax. Said section 2 states:

> "§ 2. When used in this Article, 'Special Service Area' means a contiguous area within a municipality or county in which special governmental services are provided in addition to those services provided generally throughout the municipality or county, the cost of said special services to be paid from revenues collected from taxes levied or imposed upon property within that area. 'Special Services' means all forms

> of services pertaining to the government and affairs of the municipality or county including but not limited to improvements permissible under Article 9 of the Illinois Municipal Code."

Particular attention must be paid to the last sentence in section 2 which defines "special services". Non-home rule counties and municipalities are authorized by section 2 to use special service area taxation to finance "all forms of services pertaining to their government and affairs;" the phrase "government and affairs" is capable of two constructions: One, it can be construed as delegating home rule power to non-home rule counties and municipalities, as long as the exercise of power is financed by special service area taxation. Secondly, this phrase may be construed, when applied to non-home rule counties and municipalities, as authorizing them to utilize their special service area taxation powers to finance only the exercise of their statutory powers.

There are certain maxims of statutory construction that might best be repeated at this point. A statute is presumed to be valid and the court, if possible, will give it a construction which will uphold its validity rather than nullify it. (Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456; People v. Dale, 406 Ill. 238.) A statute if capable of two or more constructions will be

given a construction that is practicable and workable (Stiska v. City of Chicago, 405 Ill. 374) and not one that will produce absurd or mischievous consequences. Ill. National Bank v. Chegin, 35 Ill. 2d 375.

To construe this statutory definition of "special services" as delegating home rule power to non-home rule counties and municipalities raises the possibility of a conflict with the Constitution. The Constitution dictates the manner by which a non-home rule county or municipality may become a home rule unit. (Ill. Const., art. VII, sec. 6(a).) Counties must have an elected chief executive officer to become a home rule unit and municipalities with a population of less than 25,000 must elect to become a home rule unit by referendum.

Suffice it to say that a non-home rule county or municipality may become a home rule unit only pursuant to the Constitution of 1970; the legislature may not vest home rule powers in a non-home rule county or municipality. Additionally, such a construction produces the paradoxical result of a non-home rule county or municipality being able to undertake activities only in an area less than the entire county or municipality but never on a county wide basis or for the entire municipality.

I am of the opinion that the definition of "special services" appearing in section 2 must be construed to allow home rule units to use the tax to finance matters that pertain to their government and affairs; non-home rule counties and municipalities, however, may only use the tax to support the exercise of their statutory powers. Such a construction is in harmony with the manner in which the Illinois Constitution of 1970 distributes power to home rule units visa non-home rule counties and municipalities. Such a construction is workable and practical.

Your reference to ambulance service provides an example of the methods by which counties may use the tax. Section 25.12-1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 419.1) authorizes counties to provide emergency ambulance service. If Wabash County were to decide to exercise this power, it may finance the ambulance service as described in section 25.12-1. (See, also, Ill. Rev. Stat. 1973, ch. 34, par. 409.9.) In the alternative, if the ambulance service is to be provided only in a contiguous area within the boundaries of the county, the special service area tax may be used.

In answer to your question, counties which are not home rule units have only those powers delegated to them by law; special service area taxation may be used only to finance the exercise of these statutory powers.

This opinion is not to be construed as a comment on the validity of that part of section 2 of the Special Service Area Tax Act that reads: "including but not limited to improvements permissible under Article 9 of the Illinois Municipal Code."

Very truly yours,

ATTORNEY GENERAL