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SPRINGFIELD

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FILE NO. S-1145

REVENUE:

**Public Hearing on Proposed
Special Service Area**

**Honorable David DeDoncker
State's Attorney
Rock Island County
Rock Island, Illinois 61201**

Dear Mr. DeDoncker:

I have your letter wherein you ask the following questions concerning the public hearing that is required to be held prior to the creation of a special service area:

1. Does the county board conduct the public hearing on the proposed special service area? If so, must a majority of the board members be present along with the county clerk or one of his deputies?
2. After hearing protests and objections to the proposed special service area, may the county board create a special service area that does not

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include a particular area of land that was part of the proposed special service area?

3. Is the public hearing on the proposed special service area subject to "AN ACT in relation to meetings"?

4. Is it necessary to hold the public hearing within the area proposed to be included in the special service area?

The conduct of the public hearing on the proposed special service area is described in section 6 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. 1975, ch. 120, par. 1306, hereafter Special Service Area Tax Act). Section 6 reads as follows:

"At the public hearing held hereunder any interested person affected by the proposed special service area may file with the municipal clerk or county clerk, as the case may be, written objections to and may be heard orally in respect to any issues embodied in the notice. The municipality or county shall hear and determine all protests and objections at the hearing and the hearing may be adjourned to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of its adjournment." (emphasis added.)

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Section 23 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 302) states, "The powers of the county as a body corporate or politic, shall be exercised by a county board." Therefore, the power of the county to hear and determine protests and objections to the proposed special service area is exercised by the county board. A majority of the board members must be present at the public hearing since a majority of members constitute a quorum to do the board's business (Ill. Rev. Stat. 1975, ch. 34, par. 804). The county clerk must keep a record of the public hearing since he has a duty to keep an accurate record of all county board proceedings. Ill. Rev. Stat. 1975, ch. 35, par. 10.

The county board has the responsibility to hear and determine "all protests and objections" at the hearing on the proposed special service area. This responsibility certainly includes hearing and determining protests and objections to the size of the proposed special service area. The public hearing would be meaningless if the board was not able to act upon these objections and decide to exclude an

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area of land from the special service area. Therefore, the county board may decide to create a special service area that does not include a particular area of land that was part of the proposed special service area.

Your third question concerns the applicability of the notice requirements of "AN ACT in relation to meetings" (Ill. Rev. Stat. 1975, ch. 102, par. 41 et seq.) to the public hearing on the proposed special service area. "AN ACT in relation to meetings" applies to all meetings of the county board at which public business is discussed (Ill. Rev. Stat. 1975, ch. 102, par. 42; 1974 Ill. Att'y. Gen. Op. 123). The Act's notice requirements, therefore, clearly apply when the board meets to hear and determine protests and objections at the public hearing.

The Special Service Area Tax Act also contains notice requirements for the public hearing on the proposed special service area. (Ill. Rev. Stat. 1975, ch. 120, par. 1305.) These notice requirements are not superseded by the requirements of "AN ACT in relation to meetings". Section 2.04 of "AN ACT in relation to meetings" states "The notice

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requirements of this Act are in addition to, and not in substitution of, any other notice required by law." The notice requirements in the Special Service Area Tax Act differ from the requirements of "AN ACT in relation to meetings"; however, there is no conflict between the two Acts. Therefore, the county board should comply with the notice requirements of both of these Acts.

The Special Services Area Tax Act, like all statutes, must be construed in light of its intended purpose. (Lincoln Nat'l. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489.) There is no express provision in the Act regarding where the public hearing on the proposed special service area must be held. However, the purpose of the public hearing requires that it be held at a place reasonably convenient to those taxpayers who would be affected by the proposed special service area. The public hearing offers taxpayers an opportunity to express their views on the proposed special service area. Taxpayers would not be able to take advantage of this opportunity if the hearing were held at an inconvenient location. Therefore, it is my opinion that, while it is not necessary to hold the

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hearing within the area proposed to be included in the special service area, the hearing must be held at a place reasonably convenient to those taxpayers who would be affected by the proposed special service area.

Very truly yours,

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