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SPRINGFIELD

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FILE NO. S-1210

REVENUE:
Real Estate Sale
Procedure

Honorable Clyde L. Kuehn
State's Attorney
St. Clair County
Belleville, Illinois 62220

Dear Mr. Kuehn:

I have your letter wherein you request an opinion on the legality of a contract between St. Clair County and Clair Investments, a private corporation, concerning the sale of delinquent tax property. You specifically ask if the county board may legally enter into this type of contract, and assuming the county board can legally enter into this type of contract, whether there are any provisions in this particular contract that are legally questionable.

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Section 216d of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 697d) authorizes the county to bid at delinquent tax sales and also to appoint someone to bid on behalf of the county. The contract between St. Clair County and a private corporation, Clair Investments, provides that:

1. The corporation shall purchase for the county all items offered at the annual tax sale not otherwise receiving a bid and pursue the same to a tax deed issued to the county.
2. The corporation shall advertise, and sell to new owners the properties so acquired for the county.
3. The corporation shall advance all costs and expenses required in obtaining good title in the county and shall render an accounting for all transactions.
4. The county shall reimburse the corporation for expenses incurred for the acquisition and disposal of each piece of property and pay as a fee a percent of the total sales price or \$100.00, whichever is greater.

It is my opinion that the county board may enter into this type of contract, but there is a provision in this particular contract that is legally questionable. Section

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10 of article VII of the Illinois Constitution of 1970
authorizes certain intergovernmental contracts:

"* * * 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.

* * *

"

Section 216d of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 697d) also authorizes the board to enter into the contract.

"* * * The presiding officer of the county board, with the advice and consent of the County Board, may appoint some officer or person to attend such sales and bid on its behalf. * * *"

Section 1 of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 482) defines "person" as a "corporation, company, or firm". Therefore, the county board may appoint Clair Investments by contract to attend sales under section 216d of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 697d) and to bid on behalf of the county.

In the contract which you have requested an opinion on, there is at least one legally questionable provision,

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which is the length of the term of the contract. The contract was originally entered into in 1964 and was to be in effect for a ten-year period. In 1974 the contract, with some changes, was renewed for "at least" an additional five year period. It is my opinion that the county board of St. Clair County, a non-home rule unit, could not contract for a period longer than their duration in office which is a four-year period.

In a previous opinion I discussed substantially the same issue in relation to a lease or contract entered into by the county board which extended beyond the term of the board. That opinion (1973 Ill. Att'y. Gen. Op. 227) advised that:

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* * *

In general, a non-home rule county board may not enter into a lease for governmental purposes if the term of the lease extends beyond that of the board. Longer leases are permissible, however, if it is administratively necessary that the term of the lease extend beyond that of the board for a short period or if circumstances are such that the county must, of necessity, enter into the lease agreement and it cannot be reasonably executed for a shorter duration."

It does not appear that it is administratively necessary that the contract extend beyond the term of the board. There

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appear to be no circumstances which would require this contract to extend for five years. Therefore, it is my opinion that the contract could not validly extend beyond the term of the county board which executed the contract.

In conclusion, the county board may legally enter into this type of contract in general. However, we are not elaborating on the specific provisions of this particular contract, except to say that the length of the term of the contract is invalid. Because it is possible to interpret terms of contracts differently, the interpretation of the terms and thus also consideration of their legality should be made at the local level.

Very truly yours,

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