



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

June 19, 1992

FILE NO. 92-012

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Acquiring Property of Public
Officer Through Eminent Domain

Honorable Dallas C. Ingemunson
State's Attorney, Kendall County
Kendall County Courthouse
110 West Ridge
Yorkville, Illinois 60560

Dear Mr. Ingemunson:

I have your letter wherein you inquire whether the actions of a public library district in acquiring property owned by one of its board members through the exercise of eminent domain will cause a violation of section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3) to occur. For the reasons hereinafter stated, it is my opinion that, under the circumstances you have specified, the district may acquire the property in question through

the exercise of eminent domain authority without causing that member to violate section 3 of the Act.

According to the information you have supplied, in 1990 the Oswego Public Library District contacted the owner of a parcel of real estate located adjacent to the library district's property holdings, and began negotiations to acquire the property as authorized by section 4-11 of the Illinois Public Library District Act (Ill. Rev. Stat. 1991, ch. 81, par. 1004-11). During the ensuing months, correspondence was exchanged between the attorneys for the owner and the library district. Before a purchase agreement could be reached between the two parties, however, the owner conveyed the parcel of real estate which is the focus of your inquiry to her grandson, who recorded the deed to the parcel in the Kendall County Recorder of Deeds' office on July 25, 1990.

Subsequent to the conveyance of the property in question and the recording of the deed, the library district attempted to negotiate with the new owner for the purchase of the property. While negotiations for the property's purchase continued, the new owner was elected to serve on the board of trustees for the Oswego Public Library District. Upon assuming office, in a letter to the Oswego Public Library District dated May 23, 1991, the new owner's attorney stated:

" * * *

[The owner] has no desire to enter into a contract to sell his property to the District.

Furthermore, he will not and cannot discuss, negotiate or enter into a contract to sell the * * * property to the District as it would be illegal and would compromise his position as a duly elected member of the Board. * * *

* * *

Against this factual background, you inquire whether a public library district may acquire the property of one of its board members through the exercise of its eminent domain authority without causing a violation of section 3 of the Public Officer Prohibited Activities Act to occur.

Section 3 of the Public Officer Prohibited Activities Act provides, in pertinent part:

"No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote.

* * *

(Emphasis added.)

In interpreting the language quoted above, the Illinois Supreme Court has stated that section 3 of the Act is a broadly drafted conflict of interest statute (Miller v. County of Lake (1980), 79 Ill. 2d 481, 490; Croissant v. Joliet Park District (1990), 141 Ill. 2d 449, 459), which expresses a general policy requiring public officers to refrain from entering into transactions which could give rise to competing interests or loyalties that could hamper their performance as

public officials. (Croissant v. Joliet Park District, 141 Ill. 2d 449, 459-462.) Thus, section 3 of the Act not only bars an official from having a private pecuniary interest in a binding contract, but also prohibits the officer from being placed in a position in which he or she may be called upon to act or vote in the making of such a contract. People v. Savaiano (1976), 66 Ill. 2d 7, 15; Miller v. County of Lake, 79 Ill. 2d 481, 490.

In order to determine whether the acquisition of a public officer's real property through the exercise of eminent domain results in a prohibited interest, it is necessary to review the nature of the eminent domain law in this State. Eminent domain is the inherent right of the sovereign to condemn or appropriate private property for public use. The power is inherent in the sovereign and exists separately from any constitutional or statutory law. (Department of Public Works and Buildings v. Kirkendall (1953), 415 Ill. 214, 218; Department of Public Works and Buildings v. McNeal (1965), 33 Ill. 2d 248, 251.) Moreover, it is well established that every person who acquires or occupies land does so at the risk of being evicted by the exercise of the superior right of the State or its delegate. Green Street Association v. Daley (1967), 373 F.2d 1, 6, appeal denied 387 U.S. 932; United States v. 7.92 Acres of Land, More or Less, Situated in the Towns of Provincetown and Truro (1985), 769 F.2d 4, 7, appeal denied 484 U.S. 1011.

Although the power of eminent domain is an inherent power of sovereignty, it can be delegated by the General Assembly to State agencies and other entities of government. (Peoples Gas Light & Coke Co. v. Buckles (1962), 24 Ill. 2d 520, 529, appeal denied 371 U.S. 185.) Once delegated, the power of eminent domain can be exercised only in the manner and for the purpose authorized. (Department of Public Works and Buildings v. Ells (1962), 23 Ill. 2d 619; Department of Transportation v. First Galesburg National Bank and Trust Co. (1990), 141 Ill. 2d 462, 468-469.) Under subsection 4-11(16) of the Illinois Public Library District Act (Ill. Rev. Stat. 1991, ch. 81, par. 1004-11(16)), the board of trustees of a public library district is authorized to utilize eminent domain to acquire property to establish, support and maintain public libraries within the district and to provide library services.

Before a governmental authority other than the State may institute an eminent domain proceeding, however, certain requirements must be satisfied. Firstly, the condemning authority must enact an ordinance or a resolution setting forth, inter alia, the necessity or public use for which the property is sought, a legal description of the property, an authorization for an agent of the entity to negotiate regarding compensation and an authorization to commence eminent domain proceedings if an agreement on compensation cannot be reached.

(Goldman v. Moore (1966), 35 Ill. 2d 450.) Secondly, the condemning entity must attempt to negotiate with the property owner for the purchase of the property. If a bona-fide attempt to agree on compensation is unsuccessful, then eminent domain proceedings may be commenced.

Once a condemnation action has been filed, the property owner and the condemning authority become adversaries in litigation. During the course of the ensuing trial, evidence is presented relating to the value of the pertinent parcel of property. Based upon this evidence, a jury awards compensation and damages to the property owner (Ill. Const. 1970, art. I, sec. 15); where there is no jury, the court ascertains the just compensation for the taking. (Ill. Rev. Stat. 1991, ch. 110, par. 7-101.) Subsequent to establishing the valuation of the property, the court enters an order regarding the payment of the compensation award (Ill. Rev. Stat. 1991, ch. 110, par. 7-123), and, once the deposit of the award is made, the condemning authority may move for an order vesting title to the property in it.

In applying the law to the facts you have provided, it appears that the Oswego Public Library District Board had determined, prior to the new owner's election to the board, that the acquisition of this particular parcel of property was necessary for the library district's expansion. Although it is unclear

whether a resolution or ordinance has been adopted by the library district authorizing the exercise of its eminent domain powers, I do not believe that a vote even at this time to adopt an ordinance authorizing the exercise of the library district's eminent domain power would result in a violation of section 3 of the Public Officer Prohibited Activities Act because, as discussed below, there is no contract involved.

As previously noted, the inability to agree on compensation is a prerequisite to the right to condemn property. Under section 3 of the Public Officer Prohibited Activities Act, however, an interested public officer would be prohibited from negotiating for compensation for his or her property. In this regard, the new owner's letter of May 23, 1991, appears to satisfy the good faith negotiation requirement by clearly stating that he was not interested in entering into a contract for the purchase of his property and that he would not negotiate regarding compensation. Because the new owner has refused to discuss the transfer of his property with the library district, no prohibited negotiations regarding a compensation price or vote on a contract will occur.

Upon the institution of an eminent domain proceeding, the task of determining the appropriate compensation lies with the judge or the jury, as the case may be. After a determination regarding compensation is reached, a judgment order will

issue from the court. In this regard, the transfer of the condemned property is accomplished by operation of law. It has long been established in Illinois that a decree or judgment at law is not a contract. (Williams v. Waldo (1841), 4 Ill. 264, 269; Hoehamer v. Village of Elmwood Park (1935), 361 Ill. 422, 428.) Consequently, a vote to commence a condemnation proceeding would not constitute a vote on a contract in which a public officer holds an interest, any more than would the entry of an order fixing just compensation and vesting title in the condemnor.

This does not mean, however, that the owner would be free to vote on the question of instituting condemnation against his own property. To the contrary, it is a well established principle that a member of a public body who has a personal interest in a matter under consideration by the body is prohibited, under the common law, from acting or voting thereon. (Reckner v. School District (S. Ct. Pa, 1941), 19 A.2d 402, 403; see 1977 Ill. Att'y Gen. Op. 51; Piggott v. Borough of Hopewell (N.J. Super., 1952), 91 A.2d 667.) Common law conflicts of interest exist which prohibit action by an interested public official even in circumstances which are not violative of section 3 of the Public Officer Prohibited Activities Act.

Under these facts, it is clear that the owner of the property in question has a direct and personal pecuniary inter-

est in the proposed condemnation of his property by the library board of which he is a member. Therefore, even though the determination to condemn the property does not involve a contract which would fall within the purview of section 3 of the Public Officer Prohibited Activities Act, it is my opinion that the interested member would nonetheless be prohibited under the common law from acting or voting upon the proposal. His abstention in all matters relating to the proposed condemnation is required.

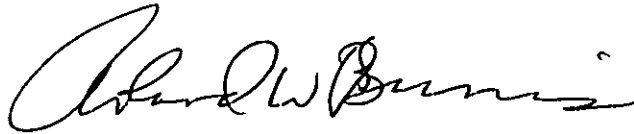
The key factor which distinguishes these circumstances from the voluntary sale of the property to the district, a transaction which would cause a violation of the Public Officer Prohibited Activities Act, is the interposition of the court in the process. The court, as a neutral arbiter, can insure compliance with the requirements of law and prevent collusion between the parties. As such, the court preserves the principles which the Act was intended to safeguard, and protects the public's interest in receiving the undivided loyalty of its public servants.

In summary, section 3 of the Public Officer Prohibited Activities Act prohibits a library district trustee from having an interest in a contract upon which he or she may be called upon to act or vote. Initiation of a condemnation action on a parcel of property, however, does not create a contract, nor is a judgment at law rendered in such an action a contract.

Honorable Dallas C. Ingemunson - 10.

Therefore, it is my opinion that a public library district may acquire the property of one of its board members through the exercise of its eminent domain authority without a violation of section 3 of the Public Officer Prohibited Activities Act occurring. The board member in question, however, is required to abstain from acting or voting upon any matters relating to the proposed acquisition of his property.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris". The signature is written in black ink and is centered on the page.

ROLAND W. BURRIS
ATTORNEY GENERAL