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SPRINGFIELD

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FILE NO. S-664

COUNTIES:
County Jail

Honorable L. E. Ellison
State's Attorney
Whiteside County
Courthouse
Morrison, Illinois 61270

Dear Mr. Ellison:

I have your letter in which you state:

"Whiteside County is contemplating the erection of a new county jail. Morrison is the county seat of Whiteside County, but the communities of Sterling and Rock Falls containing the larger proportion of the county's population, are adjacent to each other and are some 15 miles distant from the county seat. Because of this there has been some interest in the possible erection of the county jail in the vicinity of Sterling-Rock Falls.

We would, therefore, appreciate and respectfully request your opinion as to the following questions:

1. May the sole and only county jail of the county be erected at a location outside the county seat?

2. If your answer to this question is in the negative, then may a small jail facility be constructed at the county seat and a large auxiliary jail be constructed at a point outside the county seat?

The proponents of the Sterling-Rock Falls location for the new county jail have directed my attention to Section 1 of Chapter 75, Illinois Revised Statutes, which provides that a county shall maintain a jail 'at the permanent seat of justice for such county'. Since the above phrase is not defined in the statutes it is the contention of these proponents that the County Board may designate any location in the county as the 'permanent seat of justice', and provide for a jail at that location and also provide for the holding of court at that location. It is proposed that the jail so erected would be erected at the joint expense of the county, Sterling and Rock Falls, and the proponents take the position that the new Illinois Constitution Article 7, Section 10, relating to intergovernmental cooperation nullifies the provision of the statute requiring a county jail at the permanent seat of justice.

I have taken the position that the term 'permanent seat of justice' is synonymous with the term county seat and that the County Board lacks the power to designate an area other than the county seat as the 'permanent seat of justice', this being true because of the provision of Section 2, of Article 7 of the 1970 Constitution requiring a referendum to change a county seat.

> I am aware of the opinion of your predecessor issued August 2, 1967, (F-1830). While this would seem to indicate that I am correct in stating that there must be a jail at the county seat, I would appreciate it if the questions above can be specifically answered with respect to the law as it now stands."

Section 1 of "AN ACT to revise the law in relation to jails and jailers" (Ill. Rev. Stat. 1971, ch. 75, par. 1, as amended by P.A. 78-176), provides:

> "There shall be kept and maintained in good and sufficient condition and repair, a common jail in each county within this state, at the permanent seat of justice for such county. But it shall be unlawful to build a jail within one hundred feet of any building used exclusively for school purposes before October 1, 1974 or within two hundred feet of any such building on or after that date.
>
> This amendatory Act of 1973 does not apply to any home rule county." (emphasis added.)

In order to answer your first question, it is crucial to resolve the dispute, as indicated by your letter, as to the meaning of the above emphasized phrase "at the permanent seat of justice of such county". An examination of the decision of the Illinois Supreme Court in the case of Andrews v. Board of Supervisors of Knox County, 70 Ill. 65, clearly indicates that the term "seat of justice" and the term "county seat" are synonymous. In that case, appellant, an owner of property in Knox County,

sought an injunction prohibiting the construction of a county jail at Galesburg, the seat of justice of that county. Knoxville, only five miles from Galesburg, had a jail which appellant contended was sufficient. As a collateral matter, appellant, in his bill for injunction, reviewed the proceedings by which the seat of justice was removed from Knoxville to Galesburg and contended that an election that year would reverse the result. The court stated in response at page 66 that:

> "This proceeding has the appearance of an appeal from the decision of this court, rendered at January term, 1873, establishing the county seat at Galesburg by a majority of the votes of the people, in conformity with an act of the General Assembly, passed for such purpose, and refusing, before this bill was filed, a petition for a rehearing in the cause presented by the advocates of Knoxville. That question must be considered, for the present at least, at rest, and this court must recognize Galesburg as the seat of justice, or county seat, of Knox county, until some change shall be lawfully made." [emphasis added]

The Act of the General Assembly dealing with removal, alluded to by the court, also used the term "county seat" and is the same Act currently in force today. Ill. Rev. Stat. 1971, ch. 34, par. 202 et seq.

The court in Andrews, supra, in referring to appellant's historical review of the removal proceeding at first used the

term "seat of justice", but later, in reference to the same subject, used the term "county seat", stating at page 67:

> "The election alluded to in the bill, which was to take place in the following November, was an election again to test the strength of parties on the question of removal of the county seat, on which occasion it was decided, by a large majority, that the county seat should be permanently established at the city of Galesburg, of which this court will take judicial notice as a fact connected with the organization of counties." [emphasis added.]

Furthermore, in reference to the duty of a board of supervisors to build a jail and other structures, the court in Andrews, supra, stated at pages 69-70 that:

> "The time when, the style, capacity and cost of such erections are wholly committed to them, with no responsibility to any power save the people. * * *
>
> * * * Galesburg had been pronounced by this court the lawful seat of justice of Knox county, and it became the duty of the supervisors to see to it, that a sufficient court house and jail were provided and kept in repair."

There was no intimation that the board of supervisors had discretion to locate such structures outside the county seat.

The rationale for requiring the county jail to be located at the "county seat" or "seat of justice" is obvious: the jail by necessity should be near the county courthouse

which, in turn, is required to be located at the county seat. Section 33 of "AN ACT relating to circuit courts" (Ill. Rev. Stat. 1971, ch. 37, par. 72.33) provides:

> "If there is no court house in any county, or if from any cause the court house is unfit for the holding of court therein, the proper authorities of the county may temporarily provide another place at the county seat for the holding of court, or the court, by order entered upon its records, may adjourn to a suitable place at such county seat, and the place so provided, or to which such adjournment is made, shall, during the time the court is so held thereat, be held to be the court house of such county for all judicial purposes connected with such court." [emphasis added.]

As to the contention mentioned in your letter that section 10 of article VII of the 1970 Illinois Constitution dealing with intergovernmental cooperation nullifies section 1 of "AN ACT to revise the law in relation to jails and jailers", supra, an examination of that constitutional provision indicates that such a contention is clearly erroneous. Said constitutional provision provides in part:

> "(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 intergovernmental activities. * * * " [emphasis added.]

It is clear that the only contracts and associations permitted by said constitutional provision are those not prohibited by law. Any contract or association which would result in the county jail being located other than in the county seat, would not be authorized under said constitutional provision since the law requires that it be located at the seat of justice of the county.

Finally, in addition to section 1 of "AN ACT to revise the law in relation to jails and jailers", supra, section 26 of "AN ACT to revise the law in relation to counties", (Ill. Rev. Stat. 1971, ch. 34, par. 432) provides in part:

> "It shall be the duty of the county board of each county:
>
> First - To erect or otherwise provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail and other necessary county buildings,

> and to provide proper rooms and offices for the accommodation of the county board, State's attorney, county clerk, county treasurer, recorder and sheriff, and to provide suitable furniture therefor. * * * " [emphasis added.]

That statute does not specify, as does the former Act, where such jail is to be located. In resolving this difference, it is important to note that:

> "One of the rules in the construction of statutes is that if there be two affirmative statutes or two affirmative sections in the same statute, on the same subject, the one does not repeal the other if both may consist together, and the courts will seek for such a construction as will reconcile them. (Fowler v. Pirkins, 77 Ill. 271.)" Schneider v. Board of Appeals, 402 Ill. 536 at 545.

A construction which reconciles these statutory provisions is that the former Act establishes the obligation of a county to have a jail, while the latter Act prescribes whose duty it will be so see that such an obligation is fulfilled. The language emphasized above from the latter Act can be construed to refer to the obligation to build a jail as set out in the former Act.

Because of the above reasoning, I am of the opinion that the sole and only county jail of the county may not be erected at a location outside the county seat.

As to your second question, while it is true that words imparting the singular number may extend to the plural (Ill. Rev. Stat. 1971, ch. 131, par. 1.03), construing section 1 of "AN ACT to revise the law in relation to jails and jailers", supra, as permitting more than one jail would not alter the statutory requirement that the jail or jails be located at the permanent seat of justice of the county.

Very truly yours,

ATTORNEY GENERAL