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SPRINGFIELD

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FILE NO. S-493

COUNTIES:

**Power to develop real property
into a park site**

Honorable Robert H. Rice
State's Attorney
St. Clair County
Belleville, Illinois 62220

Dear Mr. Rice:

I have your letter wherein you state:

"On January 10, 1972, St. Clair County submitted an application to HUD for a fifty percent grant to develop a park site. Eighty-two acres of strip-mine ground in an unincorporated area of the county was donated by Peabody Coal Company for use as a park. The county holds a fee simple title to the ground. The county passed resolutions providing for the local share of the development cost out of the General Fund and approved the preparation and submission of the application.

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"HUD's Legal Division raised the following points:

1. What specific section of the Illinois Statutes cites that counties have the power to contract with the Federal Government to receive and expend Federal funds?
2. The county has the authority to maintain land for park purposes pursuant to Chap. 34, Sec. 418.1. HUD's Legal Division does not believe that power to maintain is tantamount to power to develop.
3. What is the statutory authority or case law for developing land for open space/park purposes by a county?

"Counties apparently have the power to contract with the Federal Government to receive and expend Federal funds by virtue of the Illinois Constitution, Article 7, Section 10, and Chapter 34, Section 403.1 Illinois Revised Statutes. The question is 'Does this constitute authority for counties to develop park or open space sites'."

Since St. Clair County is not a home rule unit, it has only the powers granted to it by law. Ill. Const. of 1970, Art. VII, sec. 7.

Section 25 of An Act to revise the law in relation to counties (Ill. Rev. Stat., 1971, ch. 34, par. 401) provides as follows:

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"The county board of each county has the powers enumerated in Section 25.01 through 25.33, subject to conditions therein stated. Powers conferred on counties are in addition to and not in limitation of their existing powers."

Section 25.11c of said Act (Ill. Rev. Stat., 1971, ch. 34, par. 418.1) provides as follows:

"To accept or receive through gift, grant, devise, dedication in plats of subdivision or otherwise, parks, playgrounds, areas enclosing flood plains, flood water runoff channels and detention ponds or basins, and other public grounds and easements located in the unincorporated part of the county and not accepted by a municipality, park district or other public agency; to hold and maintain such grounds and lands; and to supervise or regulate their use for any proper public purpose."

Section 25.11c was approved by the Governor and became effective on July 21, 1959. Laws of 1959, p. 1679.

Section 24 of An Act to revise the law in relation to counties (Ill. Rev. Stat., 1971, ch. 34, par. 303) provides, in part, as follows:

"Each county shall have power--

* * *

"Nineteenth- To acquire and hold title to real property located within the county by dedication,

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purchase, gift, devise or lease, for park and recreational purposes and to charge reasonable fees for the use of or admission to any such park or recreational area."

The above quoted provision was added to section 24 by an Act that became effective on August 3, 1965. (Laws of 1965, p. 2437). Generally speaking, section 24 grants the county the authority to acquire real property, by gift or purchase, for park purposes.

If possible, sections 24 and 25.11c should be construed in a manner to avoid conflict. If, however, any conflict should exist, the provisions of section 24, which became effective after the enactment of section 25.11c, would be controlling.

I am of the opinion that section 24 grants the county the power to acquire real property that has not already been developed into a park.

The courts have often said that a county not only has those powers expressly granted to it by law but it also has all the powers that can be implied as necessary to carry out those express powers. (LeFevre v. County of Lee, 353 Ill.

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30; People ex rel. Deneen v. Martin, 179 Ill. 611; Goodwine v. Vermilion County, 271 Ill. 12; Marsh v. The People, 226 Ill. 464) Since St. Clair County can acquire real property for park purposes, even though the land has not yet been developed into a park site, then, the county must have the implied power to develop the land into a park site.

Furthermore, in addition to its implied powers the county also has the express power "to make all contracts and to do all other acts in relation to the property . . . of the county necessary to the exercise of its corporate powers." (Ill. Rev. Stat., 1971, ch. 34, par. 303) One of St. Clair County's corporate powers is the power to acquire undeveloped land for park purposes. Now we see that it also has the express power to make contracts and to do all acts necessary to enable the county to carry out its corporate powers. Together, these powers grant to the county the authority to develop real property into a park.

Next, we approach the problem of whether a county may contract with the Federal government for the receipt of Federal funds and for the expenditure of such funds for the

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development of land into a park site. As noted above, counties do have the power to make all contracts needed to allow the county to carry out its corporate powers. Therefore, it has the power to enter into contracts to aid in the development of real property it has acquired for park purposes.

As far as the express powers of the county to contract with the Federal government are concerned, section 10(a) of Article VII of the Illinois Constitution of 1970 provides, in part, as follows:

"(a) Units of local government . . . may contract . . . with the United States . . . to exercise . . . any power or function, in any manner not prohibited by law or by ordinance. * * *"

A county is a unit of local government. Ill. Const., Art. VII, sec. 1.

To summarize, a county has the power to make contracts necessary to aid the county in carrying out its corporate powers (Ill. Rev. Stat., 1971, ch. 34, par. 303); also, in an effort to exercise its powers, a county may contract with the United States. (Ill. Const., Art. VII, sec. 10(a)). Therefore, I am of the opinion that a county may contract with the United States for the receipt of Federal funds and

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for the expenditure of those funds on the development of real property for park purposes.

Since you are in the process of developing real property for "park purposes", the Illinois Supreme Court's definition of "park purposes" becomes pertinent. The Supreme Court has defined the term "park purposes" to include the construction of museums, art galleries, botanical and zoological gardens, swimming pools, parking lots, and many other purposes, for the public benefit. Nichols v. City of Rock Island, 3 Ill. 2d 531.

In your letter you did not describe in detail the county's plans for the development of the park site. If any public work projects were being planned in connection with the development of the park, then, section 1 of An Act enabling units of local governments in this State to finance public work projects (Ill. Rev. Stat., 1971, ch. 29, par. 33a) would be of interest to the county board. Said section 1 reads as follows:

"In addition to the right, power and authority granted by any Act, all municipal corporations, political subdivisions and units of local government of this State (herein called municipalities) are authorized to apply for and accept grants and loans from and contract with

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the United States Government, the State of Illinois or any department, agency or instrumentality thereof as and when the same is created or empowered to act for the United States or the State of Illinois, for the purpose of aiding in financing the establishment, construction, improvement, extension, purchase or use of any public work project within the scope of or relating to the authorized corporate functions and operations or powers of the particular municipality and to sell or pledge therefor any securities which such municipality is authorized to issue. Such municipalities are authorized to pledge any revenue to be derived from any such public work projects and to issue bonds or special certificates payable solely out of the revenue derived from such projects.

"Such municipal corporations, political subdivisions and units of local government are further authorized to adopt supplemental appropriation ordinances making appropriation of any funds expected from any Federal or State grants or loans where such grants or loans are accepted after the adoption of the annual appropriations ordinance for the budget year."

Also, section 1 of An Act relating to planning, acquisition and development of outdoor recreation resources and facilities, and authorizing the participation by the State of Illinois and its political subdivisions in programs of Federal assistance relating thereto, (Ill. Rev. Stat., 1971, ch. 105, par. 531), may be of interest to you and the county board. It reads as follows:

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"The General Assembly finds that the State of Illinois and its political subdivisions should enjoy the benefits of Federal assistance programs for the planning and development of the outdoor recreation resources of the State, including the acquisition of land and waters and interests therein. It is the purpose of this Act to provide authority to enable the State of Illinois and its subdivisions to participate in the benefits of such programs."

In conclusion, I am of the opinion that St. Clair County may acquire the title to real property for park purposes and St. Clair County has the power to develop this real property into a park site and maintain it as such. St. Clair County may contract with the United States for the receipt of Federal funds and for the expenditure of said funds for the development of a park site.

Very truly yours,

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