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FILE NO. S-849

COUNTIES:

Leases Beyond the Term of the
County Board -
Meaning of the Phrase "Term
of the County Board"

Honorable John J. Bowman
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Dear Mr. Bowman:

I have your letter wherein you state:

"A question has arisen relative to your recent opinion entitled 'Counties: Lease Beyond the Term of the County Board' and dated August 13, 1974, which held as follows:

'In direct answer to your question, I am of the opinion that the present county board of the County of DuPage may not enter into a lease for governmental purposes if the term of the lease extends beyond the life of the

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present county board, except, where, for administrative purposes, it is necessary to extend beyond the term of the current board for a short period or if circumstances are such that the county must of necessity enter the lease agreement and it cannot be reasonably executed without a duration time that extends beyond the term of the county board.'

Briefly stated, the question is as follows:

In view of the fact that approximately one-half of the County Board of DuPage County is elected every two years, for four (4) year terms, what is the meaning of the phrase 'term of the county board' as used in your opinion quoted above."

In opinion No. S-797 to which you refer, I did not intend to use the phrase "term of the county board" with reference to the term or life of the county board in its corporate existence but rather with reference to the terms of the members of the board as it is composed at the time the lease is executed.

As I stated in the prior opinion, the reason for the limitation in the power of the county board to enter into a lease for governmental purposes is to avoid a stultification of the powers and discretion of succeeding board members in matters affecting government. Future members would be unable to legislate so as to conform to the will of the people and

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meet their immediate needs.

As was stated in Millikin v. The County of Edgar, 142 Ill. 528, 532, (involving the authority of a county board whose members were elected annually to enter into an employment contract with the keeper of the poor house for a term of three years):

"* * * If the board had the power to enter into a binding contract of this character for three years, no reason is perceived why it might not make a contract for five or even ten years, and if this could be done, the hands of succeeding boards would be tied and their powers taken from them. * * *"

You have stated that one-half of the members of the county board of DuPage County are elected every two years for four-year terms. It is clear that where newly elected members are unable to legislate regarding matters affecting government and involving county property held in trust which is subject to an outstanding lease executed by their predecessors in office, their hands have been effectively tied. The voices of those members commencing their new terms, whose election reflects the most recent expression of the will of the electorate, would be silenced with respect to the use of such

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property by the county. This is the result which is to be avoided.

Therefore, to clarify my previous opinion, the length of a lease for governmental purposes depends upon the duration of the term remaining to those county board members whose terms have the least time left to run, except where the special circumstances set forth in S-797 apply.

Very truly yours,

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