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NO. S-694

COUNTIES:
Zoning
Agricultural Uses

Honorable Patrick E. Ward
State's Attorney
Lee County
P. O. Box 462
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Dixon, Illinois 61021

Dear Mr. Ward:

I have your letter in which you state:

Your opinion is requested on the validity of Lee County's recently enacted amendment to its zoning ordinance which provides:

'Amendment to the Lee County Zoning Ordinance.

Section 5.4A Agriculture - CONCENTRATED LIVESTOCK PRODUCTION

After July 1, 1973 all concentrated live-

stock operations, as defined below, shall be re-zoned AG-2. New installations must petition for re-zoning, and after proper application, public notice will be given, and public hearings held. Any livestock producer who is currently engaged in livestock operation, may, at their own request, be classified AG-2 without charge, notice or public hearing prior to January 1, 1974.

Concentrated Livestock Production Operations are defined as:

- a. Annual production of 50,000# or more of beef.
- b. Annual production of 50,000# or more of pork.
- c. Annual production of 10,000 dozen eggs, or 25,000 pounds of broilers.
- d. Annual production of 300,000 pounds of milk.
- e. Annual production of 20,000 pounds of lamb, or mutton.
- f. Annual production of any types of livestock which generates animal waste equivalent to the above types of livestock.

Livestock producers shall have adequate land to provide for disposal of animal wastes, or provide alternate methods of disposal acceptable to the Zoning Board of Appeals.

No new concentrated Livestock Production operations will be allowed within one-half mile radius of any existing property zoned sub-division, mobile home park, industrial development, recreational area or school, without the express approval of the Zoning Board of Appeals, and 3/4 majority vote of Lee County Board.

Any petitioner for a new AG-2 classification

shall furnish the Board of Appeals with Affidavits signed by each property owner residing within one-fourth mile radius of the proposed production facility, certifying the resident property owner has no objection to the proposed re-zoning.

Any existing concentrated livestock production facility that is not used for the production of livestock for a term of 18 months shall revert back to AG-1 at the end of the 18 month term, unless an extension of time is requested and approved by the Zoning Board of Appeals.

No new sub-division, mobile home park, industrial development, recreational area or school will be allowed within one-half mile of an existing, properly zoned concentrated livestock production facility without the specific approval of the Zoning Board of Appeals and a 3/4 majority vote of the Lee County Board.'

The specific inquiry hereby made is whether this amendment violates the statutory provisions of Chapter 34, Section 3151 Illinois Revised Statutes concerning imposing regulations or requiring permits with respect to land used or to be used for agricultural purposes.

An opinion at your earliest convenience will be greatly appreciated."

Since no rights exist and no powers are conferred with respect to zoning except by statute (Park Ridge Fuel & Material Co. v. City of Park Ridge, 335 Ill. 509), it is necessary to construe a zoning ordinance in light of the statutory authority for its adoption. People v. Ferris, 18 Ill. App. 2d 346.

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Section 1 of "AN ACT in relation to county zoning"

(Ill. Rev. Stat. 1972 Supp., ch. 34, par. 3151) to which

you have referred, states in part:

"[T]he board of supervisors or board of county commissioners, as the case may be, of each county shall have the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board, to regulate and restrict the intensity of such uses, to establish building or setback lines on or along any street, trafficway, drive, parkway or storm or floodwater runoff channel or basin outside the limits of cities, villages and incorporated towns which have in effect municipal zoning ordinances; to divide the entire county outside the limits of such cities, villages and incorporated towns into districts of such number, shape, area and of such different classes, according to the use of land and buildings, the intensity of such use (including height of buildings and structures and surrounding open space) and other classification as may be deemed best suited to carry out the purposes of this Act; to prohibit uses, buildings or structures incompatible with the character of such districts respectively; and to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder: * * * In all ordinances or resolutions passed under the authority of this Act, due allowance shall be made for existing conditions, the conservation of property values, the directions of building development to the best advantage of the entire county, and the uses to which property is devoted at the time of the enactment of any such ordinance or resolution.

The powers by this Act given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted; nor shall they be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that such buildings or structures for agricultural purposes may be required to conform to building or set back lines;
* * * * (emphasis added)

The phrase "agricultural purposes" has been defined to include the rearing and management of livestock. People ex rel.

Fletcher v. City of Joliet, 321 Ill. 385.

The amendment to the Lee County Zoning Ordinance requires present and new concentrated livestock producers to do the following:

- (1) Seek AG-2 classifications through prescribed rezoning procedures,
- (2) As to petitioners seeking new AG-2 classifications, furnish affidavits from specified property owners certifying that they have no objection to the proposed rezoning, and
- (3) Provide adequate land or acceptable alternative methods for disposal of animal wastes.

The ordinance also prohibits the establishment of:

- (1) New concentrated livestock production

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operations within a specified distance of certain classifications of zoned property without obtaining specified approval, and

- (2) Certain types of land use within a specified distance of a properly zoned concentrated livestock production facility without obtaining the specified approval.

Finally, the ordinance provides that existing concentrated livestock production facilities not used for such purposes for an 18 month term shall revert back to AG-1 classifications unless time extensions are given.

The question you have presented is whether the amendment to the Lee County Zoning Ordinance violates the prohibition against zoning regulation of land used for agricultural purposes set forth in the last paragraph of the county zoning statute quoted above. It is clear that the simple classification of land as a farming district does not violate the statutory prohibition. (Cities Service Oil Co. v. County of Lake, 26 Ill. 2d 176.) The amendment to the Lee County Zoning Ordinance, however, goes much further in several instances than simply classifying land for agricultural use. First, it imposes conditions precedent to the use of lands for agricultural purposes. These conditions are: (1) requiring public hearings on petitions for AG-2 classifications thereby

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implying the possibility that petitions can in some instances be denied and use of land for concentrated livestock production prohibited; (2) requiring petitioners for new AG-2 classifications to obtain affidavits from specified property owners certifying that said property owners have no objections to the rezoning; and (3) requiring petitioners to have adequate land or provide acceptable alternative methods for disposal of animal wastes. Second, the ordinance also prohibits outright the operation of concentrated livestock production facilities located within a specified distance of certain classifications of zoned property when approval for operations at such locations is denied. Finally, the ordinance provides that facilities zoned AG-2 which are not used for the production of livestock for an 18 month term shall revert back to AG-1 unless time extensions are granted, thereby resulting in the loss of the right to use such property for said purposes.

It is therefore my opinion that the amendment to the Lee County Zoning Ordinance clearly violates the statutory prohibition against the imposition of zoning regulations with respect to land used or to be used for agricultural purposes.

Construction of ordinances is governed by the same rules

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governing construction of statutes. (East St. Louis v. Union Electric, 37 Ill. 2d 537.) As noted by the court in People ex rel. Adamowski v. Wilson, 20 Ill. 2d 568, 582:

"The fact that a part of an act is unconstitutional does not require that the remainder shall be held void unless all the provisions are so connected as to depend upon each other. The valid and invalid provisions may even be contained in the same sentence and yet be perfectly distinct and separable so that the former may stand though the latter fall.' (McDougall v. Lueder, 369 Ill. 141, 155.) If what remains after the invalid portion is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render the entire section unconstitutional unless it can be said that the General Assembly would not have passed the statute with the invalid portion eliminated.. [citation]

It is therefore my opinion that the provision in the amendment to the Lee County Zoning Ordinance prohibiting certain land uses within a specified distance of properly zoned concentrated livestock production facilities is valid since it in no way regulates land used for agricultural purposes.

Finally, as to the invalidity of the amendment's provision regarding animal waste disposal, this opinion should be construed only with respect to such regulation under "AN ACT in

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relation to county zoning" (Ill. Rev. Stat. 1971, ch. 34,
pars. 3151 et seq.) This opinion does not deal with other
regulation of animal waste disposal.

Very truly yours,

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