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SPRINGFIELD

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FILE NO. S-1144

COUNTIES:  
Special Service  
Area Tax

Honorable John J. Bowman  
State's Attorney  
DuPage County  
207 South Reber Street  
Wheaton, Illinois 60187

Dear Mr. Bowman:

I have your letter wherein you state that certain residents of a portion of the unincorporated territory of DuPage County wish to avail themselves of the provisions of "AN ACT to provide the manner of levying or imposing taxes for the provision of special services, etc." (Ill. Rev. Stat. 1975, ch. 120, para. 1301 et seq.) [hereinafter Special Services Area Tax Act], in order to obtain additional police protection from the county sheriff. You then ask several questions concerning the proper construction of section 2 of the Act (Ill. Rev. Stat. 1975, ch. 120, par. 1302) which states:

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"When used in this Article, 'Special Service Area' means a contiguous area within a municipality or county in which special governmental services are provided in addition to those services provided generally throughout the municipality or county, the cost of said special services to be paid from revenues collected from taxes levied or imposed upon property within that area. 'Special Services' means all forms of services pertaining to the government and affairs of the municipality or county, including but not limited to improvements permissible under Article 9 of the Illinois Municipal Code."

Part (2) of section 6(1) and part (6) of section 7 of article VII of the Illinois Constitution of 1970 authorize home rule units and counties and municipalities that are not home rule units "to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas". In Oak Park Federal Savings and Loan v. Village of Oak Park, 54 Ill. 2d 200, the Supreme Court of Illinois ruled that these provisions of the Constitution were not self-executing. As section 1 of the Special Services Area Tax Act indicates (Ill. Rev. Stat. 1975, ch. 120, par. 1301), the Act was meant to provide the necessary statutory implementation.

You first ask my opinion as to the meaning of the phrase "in addition to those services provided generally

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throughout the municipality or county". The answer to this question lies in an understanding of the purpose behind the special services area tax. The Local Government Committee in its report to the Constitutional Convention stated that the purpose of this tax is to allow a unit of local government "to impose taxes at different rates upon persons or property within its boundaries". (VII Record of Proceedings 1622.) Differential taxation was formerly impossible owing to the requirements of sections 9 and 10 of article IX of the Illinois Constitution of 1870 that persons or property within a municipal corporation be taxed uniformly. The power to impose different rates of taxation on individuals or property located within a given jurisdiction is, of course, not an end in itself. The Local Government Committee at page 89 of its Majority Proposal (VII Record of Proceedings 1663), explained the significance of this power as follows:

"Deletion of the uniformity requirement and addition of the proposed provision permitting differential taxation will be most significant to counties operating in their unincorporated areas. At the present time, as noted by the Commission on Urban Area Government, the uniformity clause is 'a deterrent to counties providing public services to the unincorporated areas where

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much of the current urban growth in Illinois is occurring.' (Commission on Urban Area Government, Policy Recommendations for Constitutional Modernization 1 (January, 1970).) Because of this deterrent effect, the Uniformity Clause also is an important reason for the proliferation of special districts in this state. \* \* \* And the Committee believes that this new section, as much as any other part of its proposal, will serve to halt or at least reduce the proliferation of new units of local special government in Illinois.

\* \* \*

It is evident from the remarks of the Local Government Committee concerning the special services area tax that the purpose of the tax is to allow a county to provide services to particular areas that are not available to the county as a whole, and to allocate the cost of these services to those who benefit. This does not mean, however, that the "special services" will differ in kind from those provided the county at large. Rather, it simply means that should the residents of an unincorporated area in a county feel that their share of county-wide resources is inadequate to provide all the services they need or desire, they can seek to obtain additional services financed by a special service area tax.

You next ask whether a special services area may

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include less than all of the unincorporated territory of a county. The pertinent portion of section 2 of the Act states, as you point out, that "'a Special Service Area' means a contiguous area within a municipality or county".

Generally, the words in a statute should be given their commonly accepted or popularly understood meaning. (People v. Jensen, 392 Ill. 72.) The word "contiguous" is defined by Webster's Third New International Dictionary to mean:

"1 a (1) : touching along boundaries often for considerable distances \* \* \* : ADJACENT 2 b: next or adjoining with nothing similar intervening \* \* \* "

Thus, the phrase "contiguous area" would not necessarily refer to the entire unincorporated area of the county, but rather could comprise all or any part of said unincorporated area.

It is therefore my opinion that a "special services area" as defined in section 2 of the Act may include less than all of the unincorporated area of a county.

Your third question is whether or not the furnishing of additional police protection to a limited unincorporated area of a non-home rule county is a service "pertaining to the

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government and affairs of the county" within the meaning of section 2 of the Act. In my opinion No. S-951 issued August 28, 1975, I dealt with the general question of what governmental services or activities may be financed by a special services area tax. I concluded at that time that a non-home rule municipality or county may only use the tax to support the exercise of its statutory powers.

With regard to the matter of providing police protection at the county level, section 17 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 17) provides that the "sheriff shall be conservator of the peace in his county". Thus, the actual conduct of county-wide police services is the responsibility of the sheriff. Many decisions regarding the extent of this county police protection are the responsibility of the county board, however.

First of all, although section 7 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 7) provides that only the sheriff may appoint his deputies, it also provides that the maximum number of deputies the sheriff may appoint is a matter to be decided by the county board. It

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is evident, therefore, that the county board has the statutory power to authorize the requisite increase in personnel to enable the sheriff to provide additional police protection to a particular unincorporated area of the county.

I note also section 25.05-1c of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 409.01) which provides that in counties of less than 3,000,000 inhabitants, the county board may levy a tax, subject to the approval of the county electors, for the purpose of providing police protection by the sheriff's department of that county.

Finally, I point out section 1 of "AN ACT to authorize counties to enter into contracts with townships to furnish police protection" (Ill. Rev. Stat. 1975, ch. 34, par. 3601), which provides that:

"The county board of any county may contract with any township in the county to furnish police protection outside of any incorporated municipality in the township."

The legislature in this provision seems to clearly indicate that the county has the power to contract to furnish police protection by the sheriff's department, despite the fact that the sheriff is by statute the "conservator of the peace in

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his county".

It is, therefore, my opinion that the furnishing of additional police protection to a portion of the unincorporated area of a non-home rule county qualifies as a service "pertaining to the government and affairs of the county".

Very truly yours,

A T T O R N E Y   G E N E R A L