



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-011

COUNTIES:

Lot Size for Residence on Land
Used for Agricultural Purposes

The Honorable Roger T. Russell
State's Attorney, Boone County
601 North Main Street, Suite 302
Belvidere, Illinois 61008-2609

Dear Mr. Russell:

I have your letter wherein you inquire regarding the extent of a county's authority to regulate, pursuant to section 5-12001 of the Counties Code, as amended by Public Act 90-261, effective January 1, 1998 (55 ILCS 5/5-12001 (West 1997 Supp.)), minimum lot sizes for residences located on land used for agricultural purposes. For the reasons hereinafter stated, it is my opinion that counties may now require that residential lots conform to a minimum size upon land which is used for agricultural purposes, as defined in the Act. Public Act 90-261 does not, however, grant to counties the power to prescribe minimum

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acreage requirements in order for land to be considered to be devoted to an agricultural use.

Section 5-12001, as amended, provides, in part:

" * * *

The powers by this Division 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 for agricultural purposes, which includes the growing of farm crops, truck garden crops, animal and poultry husbandry, apiculture, aquaculture, dairying, floriculture, horticulture, nurseries, tree farms, sod farms, pasturage, viticulture, and wholesale greenhouses when such agricultural purposes constitute the principal activity on the land, other than parcels of land consisting of less than 5 acres from which \$1,000 or less of agricultural products were sold in any calendar year in counties with a population between 300,000 and 400,000 or in counties contiguous to a county with a population between 300,000 and 400,000, and other than parcels of land consisting of less than 5 acres in counties with a population in excess of 400,000, 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 and counties may establish a minimum lot size for residences on land used for agricultural purposes; * * *

As used in this Act, 'agricultural purposes' do not include the extraction of sand, gravel or limestone, and such activities may be regulated by county zoning ordinance even

when such activities are related to an agricultural purpose.

* * * In this Division, 'agricultural purposes' include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.

* * *

(Emphasis added.)

The language added by Public Act 90-261 provides, for the first time, a comprehensive statutory definition of "agricultural purposes", which is similar to the definition previously employed by the Illinois Supreme Court:

" * * *

"Agriculture" is defined as the "art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc." Unless restricted by the context, the words "agricultural purposes" have generally been given this comprehensive meaning by the courts of the country.'

* * *

People ex rel. Pletcher v. City of Joliet
(1926), 321 Ill. 385, 388-89.

When a statute defines the terms it uses, those terms should be construed according to the definitions contained

therein. (Garza v. Navistar International Transportation Corp. (1996), 172 Ill. 2d 373.) Therefore, subsequent to the effective date of the amendment, the term "agricultural purposes" in section 5-12001 must be construed in accordance with the statutory definition.

Prior to January 1, 1984, counties had been granted no statutory authority to impose zoning regulations or to require permits with respect to structures on land used for agricultural purposes. (Tuftee v. County of Kane (1979), 76 Ill. App. 3d 128; County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045.) Public Act 83-758, effective January 1, 1984, however, authorized counties having a population greater than 500,000 to impose regulations upon certain parcels of less than five acres, and subsequent amendments to section 5-12001 have resulted in the current provisions applicable to small parcels in counties with populations in excess of 300,000 and 400,000, respectively, or contiguous thereto.

Unlike the exceptions permitting the regulation of agricultural uses on parcels of land of less than five acres, however, Public Act 90-261 permits the establishment of a minimum lot size for residences on land used for agricultural purposes. It was concluded in People v. Huster (1975), 34 Ill. App. 3d 977 and County of DeKalb v. Vidmar (1993), 251 Ill. App. 3d 419, that

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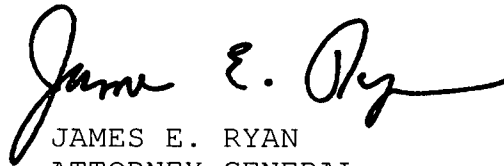
in order for a dwelling to be considered a "farm residence", the persons residing therein must be engaged in the business of farming. (See also Ill. Att'y Gen. Op. No. 96-001, issued January 31, 1996; 1976 Ill. Att'y Gen. Op. 211.) Therefore, prior to the enactment of Public Act 90-261, counties were not prohibited from requiring building permits and charging fees related to such permits with respect to dwellings situated on land which was zoned for agricultural purposes, but which were occupied by persons who were not engaged in agricultural pursuits. Counties could not, however, regulate or require permits for dwellings used by persons engaged in agriculture in counties under 300,000, including Boone County.

Based upon this background, Public Act 90-261 cannot be construed as a grant of authority for a county to establish minimum acreage requirements for entitlement to the agricultural use exemption. Rather, it is my opinion that Public Act 90-261 permits counties to establish reasonable minimum lot sizes for residences, whether or not those residences are used for agricultural purposes, on land which is otherwise used for agricultural purposes, as defined in the Act. The establishment of minimum lot sizes on agricultural land should be governed by the same

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principles that apply to the establishment of minimum lot sizes
in other areas of the county.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL