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ATTORNEY GENERAL  
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SPRINGFIELD

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FILE NO. S-1046

**COUNTIES:**

**Power of County to  
Lease Property For  
Public Purposes**

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 ask whether a non-home rule county has the authority to lease space in a county building under the following circumstances:

- (1) To the township board of the township in which the county building is located for use as town office;
- (2) To the township highway commissioner for use as the commissioner's office;
- (3) To the State Representative from the district in which the county building is located for use as the Representative's local office.

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Section 7 of article VII of the Illinois Constitution of 1970 limits the power of non-home rule units of local government to those granted them by law. The authority to sell or lease county property is found in section 24 of "AN ACT to revise the law in relation to counties". (Ill. Rev. Stat. 1973, ch. 34, par. 303.) It reads in pertinent part:

"Each county shall have power — \* \* \*

Second — To sell and convey or lease any real or personal estate owned by the county.

\* \* \*

This power to lease county property is limited by section 1(a) of article VIII of the Illinois Constitution of 1970 which provides that: "Public funds, property or credit shall be used only for public purposes". This provision reaffirms the rule laid down in Yakley v. Johnson, 295 Ill. App. 77, that counties may not lease public property for private purposes.

It is evident, therefore, that the County of DuPage may lease space in its county building to the prospective tenants you list, only if the lease in each instance will serve a public purpose. Because the county building you mention

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is not the county courthouse, the special limitations provided for in section 1 of "AN ACT to authorize county boards to lease space in courthouses" (Ill. Rev. Stat. 1973, ch. 34, par. 3551) are not applicable.

As I noted in my opinion No. S-825 issued in October 1974, "public purpose" is a term not easily reduced to an abstract definition. It has been said that a public purpose is one which has as its object the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare of all inhabitants (Clifford v. City of Cheyenne, (Wyo. 1971) 487 P. 2d 1325; United Community Service v. Omaha Nat. Bank, (Neb. 1956) 77 N.W. 2d 576); or one which confers direct and immediate public benefit of a reasonably general character (Opinion of the Justices to the House of Representatives, (Mass. 1964) 197 N.E. 2d 691); and which not only benefits the community as a whole but is also directly related to the functions of government. Roe v. Kervick, (N.J. 1964) 199 A. 2d 834.

Turning first to the question of whether or not the leasing of county office space to township officers constitutes a lease for a public purpose, it is my opinion that the answer

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must be that it is. The opening of a town office and a highway commissioner's office will confer on the public at large a direct benefit of a kind that is directly related to the functioning of local government. My predecessor, when faced with a similar question, stated in his opinion No. F-138 (1961 Att'y. Gen. Op. 322) that the rental of county property to a township road district commissioner was for a public purpose.

With regard to the issue of whether State legislators may open local offices on county property within their districts, I am of the opinion that they may since once again a public purpose will be served. A fundamental requisite of a republican form of government is an on-going opportunity for communication between the people and their elected representatives. A legislator's local office helps to facilitate such contact and as such, it is of obvious benefit to the general public and directly related to the functioning of State government.

In my opinion, therefore, the County of DuPage may lease space in its county building to all three potential tenants discussed in this opinion. In each instance the lease involved will be for a "public purpose" as required by section 1(a)

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of article VIII of the Illinois Constitution of 1970 and the  
Yakley case.

Very truly yours,

A T T O R N E Y   G E N E R A L