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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-1074

**UNIVERSITIES AND COLLEGES:**  
Approval of Community  
College Sites by Capital  
Development Board.

Mr. Fred L. Wellman  
Executive Director  
Illinois Community College Board  
544 Iles Park Place  
Springfield, Illinois 62718

Dear Mr. Wellman:

I have your letter wherein you request an opinion as to whether sections 9.01, 10.08, and 12 of art. 1 of the Capital Development Board Act (Ill. Rev. Stat. 1975, ch. 127, para. 779.01, 780.08, and 782) require that the Capital Development Board approve sites for construction of community college facilities. The Capital Development Board was

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created by the Capital Development Board Act (Ill. Rev. Stat. 1975, ch. 127, pars. 771 et seq.). The sections you enumerate relate to the powers and duties of the board. Section 9.01 provides that the board shall have the power:

"To provide for the acquisition, planning, construction, reconstruction, improvement and installation of capital facilities, consisting of buildings, structures and equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection therewith and for the acquisition, protection and development of land within the State of Illinois for open spaces, recreational and conservation purposes, as authorized by the General Assembly by appropriations from the Capital Development Bond Fund, the School Construction Fund, general revenue fund, other funds, or revenue bonds, but not including capital facilities provided entirely by local community college district funds or local school district funds or capital facilities at non-profit, non-public health service educational institutions."

The duties of the Board are enumerated in sections 10.01 through 10.12 of article I. (Ill. Rev. Stat. 1975, ch. 127, pars. 780.01 to 780.12) These include the duty set forth in section 10.08 to develop comprehensive plans for the development of real estate involving any projects to be supervised by the board. Other duties include the duty to

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exercise general supervision of the construction of any capital improvement authorized by the General Assembly to be financed by the Capital Development Board Fund, general fund, or other fund as authorized by the General Assembly, the duty to prepare plans, drawings, and estimates for public buildings to be erected for any state agency and the duty to construct and repair and supervise construction of any building under the control of and for the use of any state agency.

Section 12 of article I relates specifically to the question you raise and provides in part as follows:

"Nothing in this Act shall be construed to include the power to abrogate those powers vested in the boards of the local junior college districts and the Illinois Junior College Board by the Public Junior College Act, \* \* \* hereinafter referred to as Governing Boards. In the exercise of the powers conferred by law upon the Board and in the exercise of the powers vested in such Governing Boards, it is hereby provided that \* \* \* (iv) in connection with any such project the architects and engineers retained for the project and the plans and specifications for the project must be approved by both the Governing Board and the Board before undertaking either design or construction of the project, as the case may be."

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As you are aware, Public Act 78-669, effective October 1, 1973 amended the Public Junior College Act and changed the name of the Act to the Public Community College Act. The Illinois Community College Board became the governing state agency, and references to junior college districts were changed to community college districts. Any reference in any statute to a junior college districts means a community college district.

You have drawn my attention to section 3-30 of the Public Community College Act (Ill. Rev. Stat. 1975, ch. 122, par. 103.30) which provides that the boards of community college districts shall have the powers enumerated in sections 3-31 through 3-43. Section 3-36 (Ill. Rev. Stat. 1973, ch. 122, par. 103-36) provides in part as follows:

"To buy one or more sites for college purposes with necessary ground, and to take and purchase the site for a college site either with or without the owner's consent, by condemnation or otherwise; \* \* \* and to select and purchase all sites without the submission of the question to any referendum. No such purchase may be made without the prior approval of the State Board. \* \* \* Title to all real estate shall be taken and held in the name of the board of the community college district."

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The state board referred to in section 1-2 (Ill. Rev. Stat. 1975, ch. 122, par. 102-2) is the Illinois Community College Board.

Among the powers of the Illinois Community College Board that are set forth in section 2-12 of the Public Community College Act (Ill. Rev. Stat. 1975, ch. 122, par. 102-12) are the powers "(b) To organize and conduct feasibility surveys for new community colleges or for the inclusion of existing institutions as community colleges and the locating of new institutions" and "(f) To determine the standards for establishment of community colleges and the proper location of the site in relation to existing institutions of higher education \* \* \* " .

It is my opinion based on the clear statutory language of the Capital Development Board Act and the Public Community College Act that the Capital Development Board is not required to approve the selection of a site for a community college. The boards of local community college districts have the authority to select and to purchase all sites with the

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approval of the Illinois Community College Board. The Illinois Community College District in general defines the need for and proper location of a community college on a statewide basis. Although the Capital Development Board has the general authority to acquire real estate, section 12 of article I of the Capital Development Board Act specifically provides that nothing in the Act shall abrogate the powers vested in the boards of local community college districts and the Illinois Community College Board by the Public Community College Act.

This conclusion is also warranted by an examination of the purposes, powers and duties of each of the boards. The area of expertise of the Capital Development Board is in the main in providing technical services, with regard to construction, design, and financing of capital facilities. The authority to act as a state planning agency with regard to site selection for community colleges properly lies and is expressly reserved to the expertise of the Illinois Community College Board and local community college boards.

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Since I am of this opinion I need not consider your other questions which relate to distinctions based on time of purchase of the site and local or state control of campuses. These questions presupposed a contrary conclusion to your first question.

I note that the Capital Development Board does have authority to approve plans and specifications for projects. If a site for a community college should be selected which the Capital Development Board believes is inadequate or unsuited for a proposed structure from an engineering or architectural standpoint, the Capital Development Board would probably not approve the plans and specifications which may in effect force the selection of a new site. This opinion does not relate to that situation, which I believe probably would arise, at most, infrequently.

Very truly yours,

A T T O R N E Y   G E N E R A L