OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 13, 1998

Jim Ryan
ATTORNEY GENERAL

FILE NO. 98-013

MUNICIPALITIES:
Effect of Municipal Annexation
Agreements on County Zoning

-

The Honorable Timothy J. McCann
State's Attorney, Kendall County
109 West Ridge Street
Yorkville, Illinois 60560

The Honorable John Turner
State Representative, 90th District
2140-0 Stratton Building
Springfield, Illinois 62706

Gentlemen:

I have your letters wherein you inquire whether municipal zoning and development requirements supersede similar county requirements when a municipality enters into an annexation agreement with one or more real property owners concerning property which is located in an unincorporated area of the county. For the reasons hereinafter stated, it is my opinion that the property that is included in the annexation agreement is not subject to the municipality's zoning ordinances or zoning-

COPY

500 South Second Street, Springfield, Illinois 62706 (217) 782-1090 • TTY: (217) 785-2771 • FAX: (217) 782-7046
100 West Randolph Street, Chicago, Illinois 60601 (312) 814-3000 • TTY: (312) 814-3374 • FAX: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 (618) 457-3505 • TTY: (618) 457-4421 • FAX: (618) 457-5509

related development requirements if the affected county has adopted its own zoning ordinances and zoning-related development requirements.

Mr. McCann's inquiry concerns a proposal by a motor sport speedway developer to construct a race track near the city of Plano in unincorporated Kendall County. Although the building site for the proposed race track is not currently contiguous to the city of Plano, it is located within two miles of the city's corporate boundaries. Mr. McCann has further indicated that the city of Plano has considered entering into an annexation agreement with the landowners of the property upon which the proposed speedway would be constructed.

Similarly, Representative Turner's question concerns the submission by a developer in McLean County of a proposed annexation agreement to the city of Bloomington that contemplates the development of a number of parcels of property that are located in unincorporated McLean County but are not contiguous to the city's corporate boundaries. As set forth in the draft annexation agreement, the developer has proposed subdividing the parcels which are the subject of the agreement into lots of a size "which although permitted by Bloomington's Zoning Code, are too small for the applicable residential zoning code of McLean County." You have both inquired whether, in the circumstances you have described, the cities' zoning ordinances and development

requirements or the counties' zoning ordinances and development requirements would apply to property which is the subject of a properly executed annexation agreement.

Pursuant to Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et seq. (West 1996)), the corporate authorities of a municipality may enter into an annexation agreement with the owner of property in an unincorporated area of the county, including property that is not contiguous to the municipality. (65 ILCS 5/11-15.1-1 (West 1996).) Under the terms of such an agreement, the property owner and the municipality may agree to seek annexation of the land which is the subject of the agreement to the municipality at such future time as the land becomes contiguous to the municipality. In return, the municipality may agree, inter alia, to zone the land in a particular manner, to grant utility franchises for such land or to abate property taxes on the land. (65 ILCS 5/11-15.1-2 (West 1996), as amended by Public Act 90-14, effective July 1, 1997.) Prior to its execution, the corporate authorities of the municipality are required to conduct a public hearing on the annexation agreement. After such hearing, the agreement may be executed by the mayor or village president subsequent to the adoption of a resolution or ordinance directing such execution. (65 ILCS 5/11-15.1-3 (West 1996).) The provisions of the annexation agreement are then binding upon the municipality, the property owner and

their successors in interest for a period not to exceed twenty years. (65 ILCS 5/11-15.1-1, 11-15.1-4 (West 1996).) The property, however, does not become annexed to the municipality by virtue of the agreement; at such time as the land becomes contiguous to the municipality, appropriate proceedings must be initiated to annex it.

Turning to your inquiries, it is well established that non-home-rule municipalities possess only those powers that are expressly granted to them by constitution or by statute, together with those powers that are considered indispensable to the accomplishment of the purposes of the municipal corporation. (Scadron v. City of Des Plaines (1992), 153 Ill. 2d 164, 174.) With regard to municipal control over property that is subject to an annexation agreement, section 11-15.1-2.1 of the Municipal Code (65 ILCS 5/11-15.1-2.1 (West 1996)) provides:

" * * *

> (a) Property that is the subject of an annexation agreement adopted under this Division is subject to the ordinances, control, and jurisdiction of the annexing municipality in all respects the same as property that lies within the annexing municipality's corporate limits.
>
> (b) This Section shall not apply in (i) a county with a population of more than 3,000,000, (ii) a county that borders a county with a population of more than 3,000,000 or (iii) a county with a population of more than 246,000 according to the 1990 federal census and bordered by the Mississippi River, unless the parties to the annex-

> ation agreement have, at the time the agreement is signed, ownership or control of all property that would make the property that is the subject of the agreement contiguous to the annexing municipality, in which case the property that is the subject of the annexation agreement is subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as property owned by the municipality that lies within its corporate limits." (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (Kunkel v. Walton (1997), 179 Ill. 2d 519, 533.) Legislative intent is best evidenced by the language used in the statute. (Burrell v. Southern Truss (1997) 176 Ill. 2d 171, 174.) Where statutory language is clear and unambiguous, it must be given effect as written. City of Chicago v. Morales (1997), 177 Ill. 2d 440, 448.

Under subsection 11-15.1-2.1 of the Municipal Code, non-contiguous property which is included in an annexation agreement is generally subject to "the ordinances, control and jurisdiction of the annexing municipality". Neither Kendall County nor McLean County is subject to the additional requirements specified in subsection 11-15.1-2.1(b) of the Code. Although zoning ordinances and development requirements are not expressly referred to in section 11-15.1-2.1 of the Code, the language of that section is broad enough to encompass the land use regulations which are the focus of your inquiries. In order

to respond fully to your questions, however, it is also necessary to consider the provisions of section 11-13-1 of the Illinois Municipal Code. (65 ILCS 5/11-13-1 (West 1996), as amended by Public Act 90-522, effective January 1, 1998.)

Section 11-13-1 of the Municipal Code, inter alia, restricts a municipality's extraterritorial exercise of its zoning powers in certain counties:

> " * * *
>
> The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. * * * No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted 'An Act in relation to county zoning', approved June 12, 1935, as amended. * * *
>
> * * * "
>
> (Emphasis added.)

Division 13 of the Illinois Municipal Code grants to municipalities their general zoning powers.

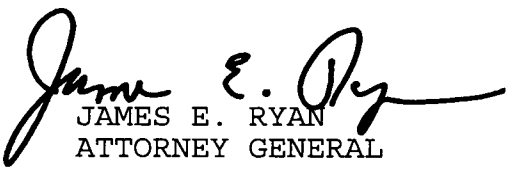
It is a fundamental rule of statutory construction that where there is a general statutory provision and also a specific statutory provision, both of which relate to the same subject, the specific statutory provision is controlling and should be applied. (People v. Villarreal (1992), 152 Ill. 2d 368, 379.) In contrast to section 11-15.1-2.1 of the Code, which does not specifically refer to zoning ordinances and development require-

ments, under section 11-13-1 of the Code the power to zone outside of a municipality's corporate limits is specifically and unambiguously denied to municipalities in counties which have enacted a zoning ordinance. Consequently, it is my opinion that municipal zoning ordinances do not supersede similar county ordinances when a municipality enters into an annexation agreement with one or more real property owners if the property that is the subject of the annexation agreement is located in an unincorporated area of a county which has adopted a county zoning ordinance.

This construction of sections 11-13-1 and 11-15.1-2.1 of the Municipal Code is supported by the decision in County of Will v. City of Naperville (1992), 226 Ill. App. 3d 662, wherein the court was asked to determine whether a municipality had the power to zone municipal property lying outside the municipality's corporate limits or whether that power belonged to the county. The appellate court reviewed the provisions of section 11-13-1 and section 7-4-2 of the Municipal Code (65 ILCS 5/7-4-2 (West 1996)), which contains language virtually identical to that at issue in section 11-15.1-2.1, and concluded that the specific statutory language of section 11-13-1 constituted an implied exception to the general jurisdictional language of section 7-4-2. Therefore, the court concluded that a municipality could not zone municipal property lying outside of the municipality's

corporate limits. The court's reasoning in that opinion is equally applicable to the circumstances you have described.

Sincerely,



JAMES E. RYAN
ATTORNEY GENERAL