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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

August 19, 1976

FILE NO. S-1146

HOME RULE:
Power of Home Rule
Unit to Enact Ordinance
Superseding State Statute

Honorable Richard J. Doyle
State's Attorney
Vermilion County
Courthouse
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. Doyle:

I have your letter wherein you state that Vermilion County presently has a county health department created pursuant to section 1 of "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments". [Hereinafter the County Health Department Act] (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 20c.) Section 9 of the County Health Department Act (Ill. Rev. Stat. 1975, ch. 111 1/2,

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par. 20c8) predates the adoption of the Illinois Constitution of 1970. It provides in relevant part that the jurisdiction of such a health department extends throughout the entire county except within:

> "Any city, village or incorporated town or combination thereof of less than 500,000 inhabitants which city, village, incorporated town or combination thereof or public health district maintains a local health department and employs a full-time health officer and other professional personnel possessing such qualifications as may be prescribed by the State Department of Public Health;"

You state that the city of Danville, a home rule municipality, has provided for an office of the Commissioner of Public Health and Safety, but that this office does not satisfy the criteria set forth in that portion of section 9 quoted above. Based on this you ask first whether the Vermilion County Board can enact health ordinances effective within the corporate limits of Danville, or whether the city's home rule status alone (your emphasis) exempts it from county health ordinances. In my opinion the fact of Danville's home rule status taken alone does not exempt it from compliance with a valid statute, but the city can, pursuant to its home rule powers, enact an ordinance conferring the exclusive jurisdiction

to act in all matters related to the health of its citizens upon a designated municipal official or department.

Section 6(a) of article VII of the Illinois Constitution of 1970 provides in pertinent part that:

> "* * * Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.
>
> * * * "

Since the matter at issue here - the regulation of public health by a home rule municipality within its corporate limits - is expressly provided for in section 6(a), it is, in my opinion, evident that this is a matter "pertaining to the government and affairs" of Danville within the meaning of the Constitution. It is, therefore, clear that the regulation of public health matters is a proper object of a home rule unit's legislative powers.

You note at page 2 of your letter a series of cases beginning with Kanellos v. County of Cook, 53 Ill. 2d 161, in which the Illinois Supreme Court has held that a home rule ordinance enacted pursuant to section 6(a) supersedes a con-

flicting statute enacted prior to the effective date of the 1970 Constitution. In that case, the court held that a home rule county could issue revenue bonds without an authorizing referendum as required by section 40 of "AN ACT to revise the law in relation to counties". (Ill. Rev. Stat. 1975, ch. 34, par. 306.) The court stated at page 166:

" * * *

> The concept of home rule adopted under the provisions of the 1970 constitution was designed to drastically alter the relationship which previously existed between local and State government. Formerly, the actions of local governmental units were limited to those powers which were expressly authorized, implied or essential in carrying out the legislature's grant of authority. Under the home-rule provisions of the 1970 constitution, however, the power of the General Assembly to limit the actions of home-rule units has been circumscribed and home-rule units have been constitutionally delegated greater autonomy in the determination of their government and affairs. To accomplish this independence the constitution conferred substantial powers upon home-rule units subject only to those restrictions imposed or authorized therein."

As a general rule, the Illinois Supreme Court has shown a marked disposition to give a broad and liberal interpretation to the home rule power and to resolve conflicts between pre-existing statutes and home rule ordinances in favor of the latter. See, Clarke v. Village of Arlington

Heights, 57 Ill. 2d 50; and People ex rel. Hanrahan v. Beck, 521 Ill. 2d 561.

Most recently in Stryker v. Village of Oak Park, 63 Ill. 2d 523, the court stated:

> "Since the adoption of the Constitution of 1970 this court has consistently held that an ordinance enacted by a home rule unit under the power found in section 6(a) supersedes a conflicting statute enacted prior to the effective date of the constitution." [cites omitted.]

The Supreme Court's position has been adopted by the Appellate Court in Johnny Bruce Co. v. City of Champaign, 24 Ill. App. 3d 900, where the court held that the zoning power was clearly within the power granted to a home rule unit by section 6(a) of article VII of the Illinois Constitution of 1970, and stated at page 904:

> "Legislative provisions heretofor existing limiting the authority of Municipalities that are now home rule units may be superseded by a valid legislative action of a home rule unit."

It is therefore my opinion that pursuant to the powers granted it under section 6(a) of article VII of the

Illinois Constitution of 1970, the city of Danville could enact an ordinance regulating for the protection of the public health and conferring upon the office of the Commissioner of Public Health and Safety substantial powers and duties in the field of health regulation. The ordinance could include those powers conferred upon the County Health Department by section 14 of the County Health Department Act. (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 20c13.) The adoption of such an ordinance would constitute an exercise of home rule authority permitted by section 6(a) of article VII of the Constitution. In that case, the home rule ordinance would prevail and the city would not be subject to the jurisdiction of the County Health Department.

You next state that pursuant to section 2 of the County Health Department Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 20c1), a referendum is proposed for November of this year with regard to the question of whether to impose an additional levy for the purpose of providing community health facilities and services. Section 2 provides in relevant part that:

> "Whenever a petition signed by voters representing not less than 10% of the votes cast at the last preceding regular election of any county is presented to the county clerk requesting the establishment and maintenance of a county health department and the levy therefor, * * * the county clerk shall immediately notify the board of election commissioners, if any; the county clerk or board of election commissioners, or both, shall give notice that at the next regular election every elector may vote upon the proposition stated in the petition * * * " (emphasis added.)

You then ask whether signatures of registered voters from within the city of Danville can be included for purposes of section 2. In my opinion they must be included.

The construction of a statute is necessary only when the language is unclear or ambiguous. (Bergeson v. Mullinix, 399 Ill. 470.) Section 2 of the County Health Department Act plainly states that in order to place the question of an additional levy on the ballot, all that is required is "a petition signed by voters representing not less than 10% of the votes cast at the last preceding regular election of any county". The fact that a portion of those voters inhabit a home rule municipality which is not subject to county-wide health ordinances, does not, in my opinion, change the obvious import of the statutory language. This conclusion is supported

by the fact that the legislature in enacting section 9 of the Act clearly anticipated situations in which certain municipalities would not be subject to county health ordinances. In spite of this fact, no exceptions were made in section 2 for the inhabitants of such municipalities.

You next ask if the referendum provided for in section 2 should be presented to all eligible voters in Vermilion County or whether the voters living within the corporate limits of Danville should be denied the vote with regard to this question. Section 2 plainly states that "every elector may vote upon the proposition" involved there. Therefore, for the reasons developed in my answer to your preceding question, it is my opinion that the referendum provided for in section 2 should be submitted to the entire county electorate.

Your final question is contingent on the conclusion that the referendum provided for in section 2 of the County Health Department Act should be presented only to those voters outside the city of Danville. Since it is my opinion that the referendum is to be submitted to the entire county electorate, I have not dealt with your final question.

Very truly yours,

ATTORNEY GENERAL