



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 92-016

COUNTIES:
Special Service Area Covering
Territory in More Than One County

Honorable Kathryn Dobrinic
State's Attorney, Montgomery County
Montgomery County Courthouse
Hillsboro, Illinois 62049

Dear Ms. Dobrinic:

I have your letter wherein you inquire whether the boundaries of a special service area established by Montgomery County may be enlarged to include territory which lies within Christian County. For the reasons hereinafter stated, it is my opinion that the existing special service area cannot be expanded to encompass territory outside of Montgomery County, but that the underlying purpose of the proposed expansion may be accomplished by alternative means if the governing bodies of the affected units of government so agree.

You have stated that Montgomery County has established several special service areas for the purpose of providing

ambulance services. Harvel is a municipality lying on the Montgomery-Christian County line. The portion of the municipality which is located within Montgomery County is included within one of the special service areas together with contiguous unincorporated territory in the county. Neither that portion of the municipality which lies within Christian County, nor the contiguous unincorporated territory in Christian County, is served by any service area or district which provides ambulance services. You ask whether the Montgomery County special service area may be expanded to include the contiguous Christian County territory.

The Special Service Area Tax Act (Ill. Rev. Stat. 1991, ch. 120, par. 1301 et seq.) implements provisions of the 1970 Constitution which authorize units of local government to levy taxes "upon areas within their boundaries" for the purpose of providing special services to the residents thereof. (Ill. Const. 1970, art. VII, sec. 6(1)(2), 7(6).) Section 2 of the Special Service Area Tax Act (Ill. Rev. Stat. 1991, ch. 120, par. 1302) provides, in pertinent part:

" * * *

'Special Service Area' means a contiguous area within a municipality or county in which special governmental services are provided in addition to those services provided generally throughout the municipality or county, the cost of said special services to be paid from revenues collected from taxes levied or imposed upon property within that area. Territory shall be considered contiguous for purposes of this Act

even though certain completely surrounded portions of such territory are excluded from the special service area. A county may create a special service area within a municipality or municipalities when the municipality or municipalities consent to the creation of the special service area. A municipality may create a special service area within a municipality and the unincorporated area of a county or within another municipality when the county or other municipality consents to the creation of the special service area.

* * *

Neither the constitutional provisions, which twice refer to "areas within their boundaries", nor the provisions of the Act, authorize a county to establish a special service area which extends beyond the boundaries of the county.

A non-home rule county possesses only those powers which are granted to it by statute or by the Constitution (Ill. Const. 1970, art. VII, sec. 7), together with those powers that may be implied as being necessary to carry out its expressed powers. (Heidenrich v. Ronske (1962), 26 Ill. 2d 360.) Absent statutory authorization for one county to collect a tax on property in another county, to provide special services to residents of the other county, there is no implicit power to do so. Therefore, it is my opinion that the existing special service area cannot be expanded to include territory in another county.

Article VII, section 10 of the 1970 Constitution and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1991,

ch. 127, par. 741 et seq.), however, may provide a method whereby the two counties and the village, in cooperation with one another, may accomplish the desired result. Section 3 of the Act (Ill. Rev. Stat. 1991, ch. 127, par. 743) provides:

"Intergovernmental agreements. Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment. This includes, but is not limited to, arrangements between the Illinois Student Assistance Commission and agencies in other states which issue professional licenses."

Section 5 of the Act (Ill. Rev. Stat. 1991, ch. 127, par. 745) provides:

"Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

Pursuant to these provisions, Montgomery and Christian Counties and the village of Harvel could enter into a joint agreement or contract to provide the services in question to the unserved territory. Such an agreement or contract could be structured in a variety of ways, so long as it was approved by the governing body of each entity.

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The structure of such an intergovernmental agreement for the provision of ambulance services might, for example, entail the establishment of a special service area in Christian County to levy a tax for the payment of services provided under contract by Montgomery County, or the creation of a joint authority to provide the service. It may also be possible for the village of Harvel to create a special service area which includes that part of the village lying within Christian County, with the village then contracting for services with Montgomery County. Because section 2 of the Special Service Area Tax Act permits a municipality, with the consent of the county, to include contiguous unincorporated territory within a special service area, unincorporated territory in Christian County could also be served by this means.

In summary, it is my opinion that the existing special service area established by Montgomery County may not be expanded to include territory located within Christian County. Essential services furnished in the special service area may, however, be provided in Christian County pursuant to an appropriate intergovernmental agreement.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL