



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

March 1, 1999

FILE NO. 99-001

COUNTIES:

Authority to Borrow Money

The Honorable Gary W. Pack  
State's Attorney, McHenry County  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether a non-home-rule county has the authority to borrow money from a financial institution and execute a multi-year installment note to secure the repayment of the loan. For the reasons hereinafter stated, it is my opinion that non-home-rule counties do not have the authority to borrow money on multi-year installment notes, in the absence of specific statutory authorization so providing.

It is axiomatic that a non-home-rule county has only those powers that are expressly granted to it by statute or by the constitution (Ill. Const. 1970, art. VII, sec. 7), together with those powers that may be implied therefrom as being neces-

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sary to carry out those express powers. (See Redmond v. Novak (1981), 86 Ill. 2d 374, 382.) Although several statutory provisions authorize counties to borrow money for particular purposes, generally in conjunction with the issuance of bonds payable from a particular revenue stream or a specific tax, no statute specifically authorizes a county to borrow money from a bank or other financial institution subject to repayment in installments.

It has long been the rule that the power to borrow money is not an incident to local political government, and a county cannot borrow money in the absence of express authority of law to do so. (Strodtman v. County of Menard (1894), 55 Ill. App. 120, 125.) The power to borrow money is not implicit in statutes generally authorizing county authorities to manage their corporate affairs; such provisions only give the county board the power to manage and control county funds and transact county business according to law. Strodtman v. County of Menard, 55 Ill. App. at 126.

I note that article VII, section 7 of the Constitution refers to the power of non-home-rule counties and municipalities to incur debt:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers \* \* \* to incur debt except as limited by law and except that debt payable from ad valorem

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property tax receipts shall mature within 40 years from the time it is incurred; \* \* \*"  
(Emphasis added.)

This language could be interpreted as granting to a county the power to borrow money except to the extent prohibited by law.

In opinion No. S-1392, issued September 25, 1978 (1978 Ill. Att'y Gen. Op. 170), Attorney General Scott considered this constitutional provision in addressing whether non-home-rule units might obtain interim financing for Farmers Home Administration projects. Attorney General Scott stated:

" \* \* \*

It can be argued that this provision is an affirmative grant of authority to non-home rule units to borrow money except as explicitly limited by law. However, no reported court decision has addressed this question, and the debates of the 1970 Constitutional Convention shed little light on the exact meaning of the provision. (See, 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3218 (remarks of Delegate Tomei); 5 Proceedings 4191 (remarks of Delegates Stahl and Parkhurst).) Although the General Assembly has passed no Act stating in effect that non-home rule municipalities may incur debt only as authorized by statute, it has apparently intended that rule to apply, for in the period since the 1970 Constitution took effect it has amended or added to many of the sections cited above that authorize specific kinds of borrowing. Given this history, it is not clear whether the courts would interpret article VII, section 7 to allow all borrowing not explicitly limited by statute. Because of that uncertainty, non-home rule municipalities would not, as a

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practical matter, be able to find lenders for interim financing.

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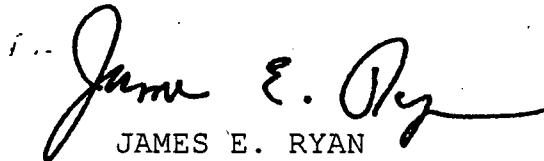
In the 20 years since opinion No. S-1392 was issued, the General Assembly has not enacted a general grant of authority to counties to borrow funds, and no court has interpreted article VII, section 7 as allowing borrowing which is not explicitly authorized by statute. Consequently, I do not believe that article VII, section 7 of the Constitution can be construed as an independent grant of authority to incur debt.

Moreover, as you have noted, certain statutory provisions appear to prohibit a county's execution of multi-year installment notes in most cases. For example, section 3 of the Revenue Anticipation Act (50 ILCS 425/3 (West 1996)) provides that any notes issued thereunder shall be due not more than 12 months from the date of issue. Further, section 6-1005 of the Counties Code (55 ILCS 5/6-1005 (West 1996)) provides that county officers cannot, on behalf of the county, make any contract which adds to county expenditures in any year above the amount provided for in the annual budget for that fiscal year; and that no contract shall be entered into or obligation incurred unless pursuant to an appropriation. Typically, counties cannot make appropriations on a multi-year basis.

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Based upon these principles, it is my opinion that a county does not have the authority to borrow money from a financial institution upon execution of a multi-year installment note unless the General Assembly has specifically authorized such borrowing by statute.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in dark ink and is positioned above the typed name and title.

JAMES E. RYAN  
ATTORNEY GENERAL