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SPRINGFIELD

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FINANCE:

**Authority of Municipalities and
Other Local Government Bodies to
Use "Interim Financing" for Farmers
Home Administration Projects**

**Mr. J. Thomas Johnson, Acting Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706**

Dear Mr. Johnson:

You have asked my opinion on the legal authority of Illinois municipalities, counties, townships, fire protection districts, and library districts to use "interim financing" for projects under a certain Farmers Home Administration program. This program is set forth in 7 C.F.R., subpart O (1977), entitled "Grants for Facilitating Development of Private Business Enterprises and Community Water and Waste Disposal Facilities." As

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set forth in 7 C.F.R. §1823.452 (1977), these grants are to be used to finance:

" * * * industrial sites in rural areas including the acquisition and development of land and the construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, transportation serving the site, utility extensions, necessary water supply and waste disposal facilities, pollution control and abatement incidental to site development, fees * * *."

Under the regulations, the grantee is required to use short-term borrowing to finance the construction — for which the grantee will be reimbursed after completion — if such short-term borrowing is legal and can be obtained at a "reasonable" interest rate. If such short-term borrowing is not legal, the Farmers Home Administration may make multiple advances of money to the grantee.

Although the regulations do not precisely define the term "interim financing," I interpret it to mean borrowing by either of two methods: (1) a conventional loan from a source such as a bank, or (2) the issuance of short-term bonds without a referendum and without the necessity of providing for their payment from specific taxes. Furthermore, since knowledgeable lenders would not supply such funds unless the grantee had

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clear legal authority to borrow them, I interpret your request to ask whether clear authority for such borrowing exists. It is my opinion that none of the local governmental units you mention, except for those counties and municipalities that are home rule units, clearly have such authority.

The Illinois Constitution of 1970, in article VII, subsection 6(a), provides that a county having a chief executive officer elected by the people of the county, any municipality of more than 25,000 population, and any municipality so electing by referendum, shall be home rule units. This subsection then provides 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." (Emphasis added.)

In Kanellos v. County of Cook (1972), 53 Ill. 2d 161, the Illinois Supreme Court held that this provision authorizes home rule units to borrow money unless limited by a statute passed by the General Assembly under article VII, subsection 6(g):

"(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not

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exercised or performed by the State other than a power or function specified in subsection (1) of this section."

Furthermore, the Illinois Supreme Court held in Stryker v. Village of Oak Park (1976), 62 Ill. 2d 523, 528, that "[a] statute intended to limit or deny home rule powers must contain an express statement to that effect. Rezner v. Korshak, 55 Ill. 2d 430." Since the General Assembly has passed no such statute under the 1970 Constitution, the power of home rule counties and municipalities to incur debt has not been limited.

The situation is not as clear for non-home-rule units, however. Before the 1970 Constitution, it was the general rule that counties and municipalities had only powers allowed them by the legislature. City of Ottawa v. Brown (1939), 372 Ill. 468, 471; County of Stark v. County of Henry (1927), 326 Ill. 535, 537. As to municipalities, there are numerous sections in the Illinois Municipal Code that authorize issuance of bonds, but I have found none that authorize borrowing without either a referendum or repayment from a specific tax. For example, section 8-1-3 of the Code (Ill. Rev. Stat. 1977, ch. 24, par. 8-1-3) allows municipalities to incur debt for corporate purposes, but requires the levy of a "direct annual tax" sufficient to pay off the debt

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within 20 years. Section 8-1-11 of the Code (Ill. Rev. Stat. 1977, ch. 24, par. 8-1-11) and "AN ACT to authorize units of government of the State of Illinois to issue full faith and credit tax anticipation notes" (Ill. Rev. Stat. 1977, ch. 85, par. 821 et seq.) authorize issuance of tax anticipation warrants or notes, but these, as their name implies, may be issued only against specific taxes that have been levied. Sections 8-4-25, 8-5-16, and 8-7-2 of the Municipal Code (Ill. Rev. Stat. 1977, ch. 24, pars. 8-4-25, 8-5-16, 8-7-2) allow issuance of notes or bonds, but require a tax to pay off such debt. Sections 11-129-1 et seq., 11-139-1 et seq., and 11-141-1 et seq. of the Municipal Code (Ill. Rev. Stat. 1977, ch. 24, pars. 11-129-1 et seq., 11-139-1 et seq., 11-141-1 et seq.) authorize municipal bonds for water or sewer systems, but set requirements for repaying the bonds from revenues of such projects.

Article VII, section 7 of the 1970 Constitution provides as follows:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers * * * (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; * * *."

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

Turning to counties, as discussed above, a home rule county may borrow money except as explicitly limited in a

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statute passed by three-fifths of the members elected to each house of the General Assembly. As present, Cook County is the only Illinois county with home rule powers. As to all other counties the discussion above concerning the uncertain legality of borrowing not specifically authorized by statute applies. A number of statutes, such as section 40 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, par. 306) and "AN ACT in relation to the issuance of revenue bonds by certain counties for public hospitals" (Ill. Rev. Stat. 1977, ch. 34, par. 2291 et seq.) authorize counties to issue bonds, but only if approved by referendum or only for specific purposes and with provision for use of taxes or revenue to pay them off. In the absence of a favorable reading of article VII, section 7, of the Constitution, non-home-rule counties too would be able to borrow money only in the limited situations allowed by statute, which would not meet the conditions for interim financing listed above.

The three other kinds of units of local government you have mentioned — townships, fire protection districts, and library districts — are controlled by article VII, section 8, which grants them only the powers given by statute. Concerning

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townships, there are several statutes allowing them to issue bonds in specified situations, but none which give the kind of unrestricted authority that is needed for interim financing. "AN ACT in relation to township community buildings" (Ill. Rev. Stat. 1977, ch. 139, par. 152 et seq.) allows issuance of bonds for the purpose set forth in its title, but only if approved by referendum. "AN ACT authorizing any town having a population of less than 500,000 to establish etc. a public hospital" (Ill. Rev. Stat. 1977, ch. 139, par. 160.6 et seq.) allows issuance of bonds for hospitals but requires the levy of a tax to pay the bonds. "AN ACT in relation to waterworks systems, etc." (Ill. Rev. Stat. 1977, ch. 139, par. 160.31 et seq.) allows issuance of bonds for such systems, but they are required to be revenue bonds payable only from the income of such a system. "AN ACT to enable boards of directors of public libraries to borrow money for the erection or improvement of library buildings or to purchase library sites" (Ill. Rev. Stat. 1977, ch. 81, par. 46 et seq.) allows township libraries to borrow for the purposes set forth in its title, but only if approved by referendum. Thus none of the statutes allowing borrowing by townships would fit the requirements set forth above.

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Turning to fire protection districts, the only authority for them to borrow money is in sections 12 and 13 of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1977, ch. 127 1/2, pars. 32, 33). The latter section requires a "direct annual tax" sufficient to retire the bonds within 20 years.

Similarly, as to library districts, sections 5-2 and 5-3 of The Illinois Public Library District Act (Ill. Rev. Stat. 1977, ch. 81, pars. 1005-2, 1005-3) allows issuance of bonds, but would require voter approval and a tax to pay off the bonds.

For the reasons set forth above, I conclude that "interim financing," as I understand that term to be used in the Farmers Home Administration regulations, is legally available for home rule municipalities and home-rule counties, is not legally available for townships, fire protection districts, or library districts, and is not clearly legally available for non-home-rule municipalities or non-home-rule counties.

Very truly yours,

A T T O R N E Y G E N E R A L