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**CITIES AND VILLAGES;  
City of Joliet Not Obligated  
By Statute to Bear Proportional  
Share of Development Costs of  
Public Water Commission in Absence  
of City Ordinance**

Honorable Robert W. Mitchler  
State Senator  
Chairman, Illinois Water Pollution  
and Water Resources Commission  
State House, Room 545  
Springfield, Illinois 62706

Dear Senator Mitchler:

I have your letter in which you request an opinion "as to the legal obligation of the City of Joliet to act with the other member municipalities which constitute the Public Water Commission to proceed with the work which it was originally formed to do". The situation out of which this request arises is stated in your letter in part as follows:

"From the hearings conducted in the Joliet area by the Illinois Water Pollution and Water Resources Commission, the seven municipalities of Frankfort,

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Joliet, Lockport, Mokena, New Lenox, Rockdale and Romeoville have taken the action required pursuant to Illinois Revised Statutes, Chapter 24, Section 11-135-1, et seq. which provides for the establishing of a Public Water Commission. This Commission was formed in March of 1971, engineering and financial consultants have been retained and a significant amount of preparatory work was completed for the ultimate purpose of construction of a water works system and a common source of supply of water for the member communities.

\* \* \*

The activities of the Commission to date have been financed by grants from the various municipalities together with a grant from the State of Illinois. However, when an ordinance was presented to the various municipalities making up the members of the Public Water Commission for the securing of the financing necessary for preliminary engineering and development work, the City of Joliet has refused to enact such an Ordinance. This has led to a stalemate generally during the years 1973 and 1974, during which time additional meetings have been held, additional information has been provided and hearings have been had with experts, all to the end of soliciting the cooperation of the City of Joliet. \* \* \* "

Section 11-135-1 of the Illinois Municipal Code

(Ill. Rev. Stat. 1973, ch. 24, par. 11-135-1, provides in part as follows:

"§ 11-135-1. Any 2 or more municipalities, except cities of 500,000 or more inhabitants, may acquire either by purchase or construction a waterworks system or a common source of supply of water, or both, and may operate jointly a waterworks system or a common source of supply of water, or both, and improve and extend the same, as provided in this Division 135. The corporate authorities of the specified munici-

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palities desiring to avail themselves of the provisions of this Division 135 shall adopt a resolution or ordinance determining and electing to acquire and operate jointly a waterworks system or a common source of supply of water or both, as the case may be.

Any municipality adopting a resolution or ordinance to acquire and operate jointly a waterworks system or a common source of supply of water, or both, as the case may be, under the provision of this Division 135, is authorized to obligate itself to the Commission, when created, to bear a proportionate share of the development costs of any project proposed by the Commission including plans, feasibility reports and engineering even though the project is never constructed or water is never supplied by the Commission to such municipality.

Whenever any municipality determines to obligate itself for its proportionate share of development costs as above provided, it shall adopt an ordinance declaring its intention to do so, fix the specific amount of its share of the cost it proposes to obligate itself for, the period over which it proposes to pay its obligation (not exceeding 5 years) and the specific amount to be paid annually, if such obligation is to be paid in installments.

From and after such ordinance becomes effective, it shall be the duty of the municipality to include an amount sufficient to pay the annual installments of its obligation each year in the next succeeding appropriation ordinances. No prior appropriation shall be required for a municipality to incur the obligations herein provided for.

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Any municipality having adopted a resolution or ordinance to establish a public water commission is authorized to obligate itself by another ordinance to bear a proportional share of

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development costs for such a project. The language of this section authorizes members of the Public Water Commission to bear the development costs. It does not require it. It is discretionary. An action in mandamus will not lie to compel the performance of a discretionary act, nor will a writ in mandamus issue to direct the performance of an act where there is no duty on the part of the party against whom the writ is sought to do the thing which the petitioner seeks to have done. (People ex rel. Citizen's Bank and Trust Co. v. Ward, 39 Ill. App. 2d 20; People ex rel. Cantu v. School Directors of Dist. No. 108, Cook County, 58 Ill. 2d 282. It is my opinion, therefore, that the City of Joliet may not be required to enact an ordinance relating to the assumption of development costs under the above cited statutory section.

The authorities are clear to the effect that in order to find some obligation under this statute upon the part of the City of Joliet to bear a proportional share of development costs in the instant case, that the City must be shown to have adopted an ordinance authorizing it to bear such costs. People v. City of Paris, 380 Ill. 503; City of Chicago v. Newberry Library, 7 Ill. 2d 305. No such ordinance has been adopted by the City of Joliet and, therefore, the City of Joliet

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has not obligated itself to bear a proportional share of development costs under the provisions of section 11-135-1 of the Illinois Municipal Code. Ill. Rev. Stat. 1973, ch. 24, par. 11-135-1.

An argument has been advanced by other members of the Commission that the instant situation is analogous to that in the case of People ex rel. Morgan v. Village of Berkeley, 409 Ill. 160, wherein the Supreme Court held in granting petitioners' action in mandamus that to permit a municipality which has adopted an ordinance to create a public water commission to withdraw from such commission, would destroy the purpose of section 11-135-1 of the Illinois Municipal Code. (Ill. Rev. Stat. 1971, ch. 24, par. 11-135-1.) It is argued by analogy that in the present case the City of Joliet must adopt an ordinance obligating itself to bear a proportional share of development costs as failure to do so would result in the destruction of the effective operation of the proposed Public Water Commission.

The present situation, however, is not analogous to that in the Morgan case, supra. In the present situation, the other members of the Commission seek to compel the City of Joliet to bear a proportional share of development costs, and

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not to compel the City to contract with the Commission for water supply. At the time of formation of the Commission in 1971 section 11-135-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1971, ch. 24, par. 11-135-1) contained no provisions in relation to development costs. Such provisions were added by Public Act 77-2185, sec. 1, effective October 1, 1972. Thus, at the time of formation of the Public Water Commission there was no statutory authorization for the assumption of any such expenses by the member cities and villages of the Commission. In adopting an ordinance in 1971 to participate in the Public Water Commission, the City of Joliet did not agree to fund development costs. The Commission has authority to fund development costs by other means.

Very truly yours,

A T T O R N E Y   G E N E R A L