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REVENUE:
A Local Library Is a "Governmental Body" Within the Meaning and Intent of Section 12 of "AN ACT in Relation to State Revenue Sharing with Local Governmental Entities"

Honorable Jim Edgar
Secretary of State of Illinois
Springfield, Illinois 62756

Dear Secretary Edgar:

I have your letter wherein you pose the following questions:

(1) Is a local library created pursuant to "The Local Library Act" (Ill. Rev. Stat. 1979, ch. 81, par. 1-0.1 et seq.) a "governmental body" within the meaning of section 12 of "AN ACT in relation to State revenue sharing with local governmental entities" (Ill. Rev. Stat. 1980 Supp., ch. 85, par. 616) and thus entitled to an allocation of personal property replacement revenues levied by its taxing district?

(2) May the governing boards of the participating libraries in a public library system created pursuant to "The Illinois Library System Act" (Ill. Rev. Stat. 1979, ch. 81, par. 111 et seq.) provide that members of non-system, non-public libraries within the area of operation may vote for directors of the public library system?

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shall allocate to each taxing district as defined in Section 1 of the Revenue Act of 1939, in accordance with the provisions of paragraph (2) of this Section, the portion of the funds held in the Personal Property Tax Replacement Fund which is required to be distributed, as provided in paragraph (1), for each quarter.
* * * The Department shall then certify, pursuant to appropriation, such allocations to the State Comptroller who shall pay over to the several taxing districts the respective amounts allocated to them.

* * *

Any taxing district which receives an allocation based in whole or in part upon personal property taxes which it levied for another governmental body or school district in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section had it levied its own taxes.

* * *

(Emphasis added.)

The term "Taxing Districts" is defined in section 1 of the Revenue Act of 1939 (Ill. Rev. Stat. 1979, ch. 120, par. 482) to include "counties, townships, incorporated cities, towns and villages, school, road, park, sanitary, mosquito abatement, forest preserve, public health, fire protection, river conservancy, tuberculosis sanitarium, and any other municipal corporations or districts with the power to levy taxes". Local libraries are not authorized to levy taxes. Rather, library taxes are levied by the corporate authorities of the entity which created the library, in amounts determined by the library board, and are collected in like manner with other general taxes of the city, village, incorporated town or township.

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(Ill. Rev. Stat. 1979, ch. 81, par. 3-5.) Consequently, local libraries are not "Taxing Districts" within the meaning of that term as defined in section 1 of the Revenue Act of 1939 and are not entitled to a direct allocation of replacement funds. However, section 12 of "AN ACT in relation to revenue sharing, etc." provides for indirect allocation of replacement funds to governmental bodies, which do not have power to levy taxes. The section provides that:

"Any taxing district which receives an allocation based in whole or in part upon personal property taxes which it levied for another governmental body or school district in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section had it levied its own taxes."

Therefore, if a local library is a "governmental body" within the meaning of section 12, it would be entitled to receive an allocation of replacement funds.

No definition of "governmental body" appears in "AN ACT in relation to State revenue sharing, etc." (Ill. Rev. Stat. 1979, ch. 85, par. 611 et seq.). As you point out in your letter, however, the constitutional mandate of section 5 of article IX of the Illinois Constitution of 1970 directs that revenues lost by units of local government "as a result of the abolition of ad valorem personal property taxes" be replaced. As evidenced by its preamble, Public Act 81-1st S.S.-1

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was expressly enacted to comply with this constitutional mandate:

"WHEREAS, Section 5(c) of Article IX of the Illinois Constitution of 1970 directs the General Assembly to repeal the ad valorem tax on personal property and to replace the revenue lost by units of local government and school districts as a result of said abolition by imposing statewide taxes on those classes relieved of the burden of paying ad valorem taxes on personal property; and

WHEREAS, the General Assembly has determined that the taxes imposed by the Act hereinafter set forth will fulfill the mandate of Section 5(c) of Article IX of the Illinois Constitution of 1970; and

WHEREAS, the General Assembly adopts the Act hereinafter set forth in compliance with the mandate of Section 5(c) of Article IX of the Illinois Constitution of 1970; * * * " [the enacting clause and text of the Act follow].

The cardinal rule of statutory construction is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute. Moreover, in construing a statute to give effect to that intention, a court should look to the object or purpose to be attained or subserved by the statute. (Lincoln Nat. Life Ins. Co. v. McCarthy (1957), 10 Ill. 2d 489, 494-95; People v. Floom (1977), 52 Ill. App. 3d 971, 974-75.) Based on these rules of construction and because, as you also point out, the purpose of Public Act 81-1st S.S.-1, which amended "AN ACT in relation to State revenue sharing, etc." to add section 12, was to replace revenues lost by "units of local government", the term "governmental body", in the context of section 12, can be construed to be synonymous with the term "units of local government".

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The term "units of local government" is defined in section 1 of article VII of the Illinois Constitution of 1970 as follows:

" * * * 'Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts." (Emphasis added.)

The Illinois Constitution does not define "special districts" within the context of the term "units of local government". In the case of Chicago Transit Authority v. Danaher (1976), 40 Ill. App. 3d 913, 917, the First District Appellate Court held:

" * * *

* * * The words 'special district,' so far as they are used in reference to units of government, have a technical meaning. A 'special district' is a relatively autonomous local government which provides a single service. They have also been characterized as 'possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property.' (See 1973 Illinois Attorney General's Opinions, 102, 104, No. S-601, dated June 27, 1973.) * * *

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The Court determined at pages 917-18 that a "special district" need not have its own powers of taxation and ruled that CTA and CHA were each special districts.

The powers granted a local library under The Illinois Local Library Act are broad. (Ill. Rev. Stat. 1979, ch. 81, par. 1-0.1 et seq.) The board of library directors has exclusive control of the expenditure of all moneys collected for

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the library and deposited to the credit of the library fund. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(2).) The library board has exclusive control of the construction of library buildings and the care and custody of library property. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(3).) The library board may sell personal or real property belonging to the library. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(6).) Moreover, the board is statutorily authorized to enter into contracts, to take title to any property acquired for library purposes, and to sue and be sued. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(10).) Consequently, it appears that a local library is a "special district" within the meaning of section 1 of article VII of the Illinois Constitution of 1970 and thus a "unit of local government". This conclusion is further supported by reference to the appendix of the Local Government Committee proposal to the Sixth Illinois Constitutional Convention which lists public library as a special district within the term "unit of local government". (Committee Proposals, Sixth Illinois Constitutional Convention, vol. 7, p. 1849.) As a "unit of local government" and "governmental body" within the meaning of section 12 of "AN ACT in relation to State revenue sharing with local governmental entities", a local library is entitled to the indirect allocation of property tax replacement funds as provided in section 12.

You have also inquired whether the governing boards of the participating libraries in a public library system created pursuant to The Illinois Library System Act [the Act]

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(Ill. Rev. Stat. 1979, ch. 81, par. 111 et seq.) may provide that members of non-system, non-public libraries within the area of operation of the system may vote for directors of the public library system. As stated above, it is my opinion that governing boards may not do so.

Section 2 of the Act (Ill. Rev. Stat. 1980 Supp., ch. 81, par. 112) provides that:

"The term 'library system' as used in this Act means one or more tax-supported public libraries serving a minimum of 150,000 inhabitants or any area of not less than 4,000 square miles. A library system may consist of any of the following:

a) A cooperative library system in which 10 or more public libraries enter into a written agreement to provide any or all library services on a cooperative basis.

b) A consolidated library system in which 10 or more public libraries consolidate to form a single library.

c) A library system consisting of a single public library serving a city of over 500,000 population." (Emphasis added.)

With reference to the selection of the directors of a public library system other than a library system consisting of a single public library serving a city of over 500,000 population, section 5 of the Act (Ill. Rev. Stat. 1979, ch. 81, par. 115) provides in pertinent part that:

"Each public library system as provided in paragraphs 'a' and 'b' of Section 2 of this Act shall be governed by a board of directors numbering at least 5 and no more than 15 persons to be selected from the governing boards of the participating libraries. The number of directors, the manner of selection, the term of office and the provision for filling vacancies shall be determined by the governing

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boards of the participating libraries at a joint meeting called for that purpose. No director of any library system, however, shall be permitted to serve for more than 6 consecutive years. A director, upon serving 6 years, may again serve after an interim of at least 2 years.

* * *

(Emphasis added.)

Section 5 authorizes the governing boards of the participating libraries at a joint meeting called for that purpose, to determine the number of directors (within specified limits) to be selected, the manner of selection, the term of office, and the provision for filling vacancies. Section 5 does not specifically authorize governing boards to provide that members of non-system, non-public libraries may vote for directors of a public library system. Nor can I read the authority to provide for "the manner of selection" as encompassing the power to do so. In the context of section 5 "the manner of selection" clearly means the mode or technical procedure to be followed. Moreover, the Act, when read as a whole, does not support a conclusion that non-system, non-public libraries may be allowed to participate in an organized public library system in this manner.

As an initial matter, the Act is quite clear in providing that only public libraries may participate in a public library system. Section 2 of the Act, as discussed above, defines "library system", in part, as one or more tax-supported

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public libraries. Additionally, according to that section, a "library system" may consist of a cooperative or consolidated system of 10 or more public libraries. Moreover, section 9 of the Act (Ill. Rev. Stat. 1979, ch. 81, par. 119) specifically provides that the application of any non-participating public library to become a member in an already existing library system must be approved by the governing board of such library system and the State Librarian (emphasis added). Section 9 states that:

" * * * If the application is approved by the governing board of such library system and the State Librarian, the library submitting the application shall become a participating library in such system and shall have the same rights, duties and privileges as other libraries participating therein. However, the board of library directors or trustees of any public library that is a member of any library system shall retain all powers specified by law." (Emphasis added.)

It is apparent from the above-emphasized language that even public, non-participating libraries are not entitled to the privileges of participating public libraries. The right to vote for directors of the system clearly must be considered to be a right and privilege of membership in such a system. Consequently, non-system, non-public libraries within the area of operation of the system may not participate in the election of directors for a public library system.

Very truly yours,

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