



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

January 30, 1974

FILE NO. S-684

OFFICERS:

**Power to Perform Police
Services under Intergovern-
ment Cooperation Agreement**

Honorable David Fogel
Executive Director
Illinois Law Enforcement Commission
150 North Wacker Drive
Chicago, Illinois 60606

Dear Director Fogel:

Receipt of your recent letter is acknowledged. In
this letter you state:

"This letter is written seeking clarification
of certain constitutional and statutory provisions
now in effect which have a bearing upon the
provision of law enforcement services in the State
of Illinois.

The specific situation of which I am inquiring
is a proposed multijurisdictional policing design
for municipalities in the Barrington area. The
area in question involves seven municipalities:
Barrington, Barrington Hills, North Barrington,
South Barrington, Deer Park, Tower Lakes and
Inverness. The planned policing design proposes
that the Village of Barrington provide police
services to the other six municipalities by way
of contractual agreement or functional consolidation.
The problem created by this plan is that the

Barrington area, which encompasses the above named municipalities, extends into four counties. The Village of Barrington, the nucleus of this plan, is situated both in Cook and Lake Counties. The Village of Barrington Hills is situated in four counties: Cook, Lake, Kane and McHenry.

Under Article VII, Section 10 of the 1970 Constitution, 'units of local government are authorized to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance.' Since the Village of Barrington lies in two counties the question has arisen as to the authority of a Barrington police officer in either county yet outside of Barrington municipal boundaries. In essence, the question is: can a Barrington police officer legally provide police service and affect (sic) arrests in the towns of North Barrington, Deer Park and Tower Lakes? It should be noted that the Barrington Village Clerk's Office is physically located in Cook County.

With the resolution of that particular problem the geographic situation of the Village of Barrington Hills then becomes an issue. The central question here is: can a Barrington police officer legally provide police services and affect (sic) arrests in those portions of Barrington Hills that lay within McHenry and Kane counties? It should be noted here that the Barrington Hills Village Clerk's Office is physically located in Cook County.

Referring again to Article VII, Section 10, paragraph A of the 1970 Illinois Constitution, an opinion is also requested regarding the prohibitory clause '. . . in any manner not prohibited by law or ordinance.' Is this prohibitory clause to be interpreted in relationship with Chapter 125, Sections 27 and 28 of the Illinois Revised Statutes? The Barrington police officers would be providing services in Kane, McHenry and Lake counties and as such would they be considered 'special policeman' as referred to in Chapter 125, Sections 27 and 28?"

Honorable David Fogel - 3.

The Illinois Constitution should be construed according to the same general principles that control the construction of statutes. (People v. Russell, 301 Ill. 439; Johnson v. State Election Board, 53 Ill. 2d 256.) The primary object of construction of the Constitution is to ascertain and give effect to the intention of the drafters. (People v. Turner, 31 Ill. 2d 197, cause transferred to 60 Ill. App. 2d 338.) Intention should be sought primarily from the language used. If the legislative intent can be ascertained therefrom, it must prevail and be given effect without resort to other aids for construction. Western National Bank of Cicero v. Village of Kildeer, 19 Ill. 2d 342.

Section 10, article VII of the 1970 Illinois Constitution provides, in part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

Honorable David Fogel - 4.

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions. (emphasis added.)

* * *

"

The language of this section clearly shows that the framers intended that units of local government are to have broad powers to associate and contract to obtain government services. Included in these broad powers is the right to combine or transfer functions of government. See 6th Ill. Const. Con. Committee Proposals Vol. 7, p. 1747 et seq.

Essentially, the agreement you outline in your letter is one to transfer a function of municipal government from one unit of local government to another. In participating in this type of arrangement, members of the Village of Barrington's Police Department retain their positions and powers within the Barrington corporate limits. Within the corporate limits of each of the contracting municipalities, the Barrington Police Department assumes the function of a local police department. In assuming this function, according to agreement with corporate authorities of each of the contracting municipalities, the Barrington police would have the same power to perform police

Honorable David Fogel - 5.

services that a force created by the individual municipal authorities would have. It is my opinion that the Barrington Police Department would have the power to perform police services in any of the contracting municipalities without regard to the county in which the municipality is located.

Furnishing of police protection is a governmental function which has long been identified with the municipal level of government; thus no question arises as to whether the contracting municipalities have authority, in the first instance, to deal cooperatively in this field. (See 6th Ill. Const. Con., Debates pp. 3421, 3422 relating to joint fire and police department activities.) Moreover, I find no provision in the Illinois Revised Statutes relating to territorial powers of police officers which would be offended by such an arrangement. To the contrary, existing statutory provisions antedating the new Constitution expressly permit policing agreements between municipalities and confer full powers on police officers acting outside of their "home" municipalities pursuant to such agreements. Ill. Rev. Stat. 1971, ch. 24, sec. 11-1-2.1 provides, in pertinent part, as follows:

Honorable David Fogel - 6.

"Police officers furnishing assistance under such agreements have all the powers of police officers of any requesting municipality and are subject to the direction of the Chief of Police of a requesting municipality." (emphasis added.)

Although the residence requirements to which you refer have been changed by Public Act 78-416, since these apply only to deputy sheriffs and special policemen, it is my opinion that these requirements are not applicable to the situation you describe. The Barrington police are to function as the local police department for each of the contracting municipalities. They are members of a permanent and organized police department performing regular police duties. They are not special police. See Fogarty v. York, 43 App. Div. 433, 60 N.Y. Supp. 352.

Section 3-14-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1971, ch. 24, par. 3-14-1) requires that police officers of municipalities of less than 500,000 population reside in the municipality unless the requirement is waived by local ordinance. It is my opinion that this requirement would not apply to the Barrington police officers while they are performing police services in the contracting municipalities. The Barrington Police Department assumes the function of a local police de-

Honorable David Fogel - 7.

partment in each of the contracting municipalities, but in this context the Barrington police officers do not, in fact, become municipal officers of each of the contracting municipalities.

In drafting the agreement between the various municipalities involved, the provisions of the Intergovernmental Cooperation Act, Public Act 78-785, should be consulted.

Section 5 of the Act provides:

"* * * [S]uch 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."

While neither the constitution nor the statute fully states the manner in which intergovernmental contracts are to be approved, it would seem that adoption of the terms of the contract as an ordinance by the various municipalities would be helpful in dispelling any doubt that the parties acted with sufficient formality. Statement of the terms of the contract as an ordinance would also clearly define the role of the Barrington Police Department in the event there is some conflict with a pre-existing ordinance.

In addition, I would suggest that the contract clearly

Honorable David Fogel - 8.

define the command structures and the liability for losses incurred in performing police services in the various municipalities. Although section 11-1-2.1 of the Illinois Municipal Code (Ill. Rev. Stat. 1971, ch. 24, par. 11-1-2.1) is not applicable to the situation, it does suggest areas of responsibility that should be covered in any multi-jurisdictional policing agreement.

Very truly yours,

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