WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

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FILE NO. S-1023

COUNTIES:
County Detention Home
not Subject to Municipal
Zoning

Honorable Peter J. Woods
State's Attorney
Ogle County
Oregon, Illinois 61061

Dear Mr. Woods:

I have your letter wherein you inquire as to whether the county of Ogle, in establishing a county detention home, is subject to the zoning requirements of the city of Rochelle. Your letter states that the county board of Ogle County determined that there was a need in the county to provide for wards of the court and, thus, for a county juvenile detention home. The county entered into a contract to purchase property in the city of Rochelle, subject to the property being zoned for its use. The

property is currently zoned single-family residential.

Ogle County clearly has the power to establish a juvenile detention home. The specific basis for the county's authority to undertake such an operation is in "AN ACT to authorize county authorities to provide for the temporary care and custody of dependent, delinquent or truant children, and to levy and collect a tax for that purpose" (hereinafter called the County Detention Home Act). (Ill. Rev. Stat. 1973, ch. 23, pars. 2681 et seq.) This Act specifically states, in pertinent part:

> "* * * Any county in this State may locate, purchase, erect, lease or otherwise provide and establish, support and maintain a detention home for the temporary care and custody of dependent, delinquent or truant children." (emphasis added.)

The county may levy a tax for this. That this section alone is sufficient to authorize the county board to provide for, establish, support, and maintain a juvenile detention home was decided by the Illinois Supreme Court as early as 1920 in the case of People ex rel. Flick v. Chicago, Burlington & Quincy R.R. Co., 291 Ill. 502 where the court stated at page 511:

> "It will be seen from the various provisions of the act that it is complete within itself and in no way dependent upon any other act for its operation."

The importance given by the court in the Flick case to this county function is further illustrated by the following passage found at page 512:

> "* * * It was evidently the intention of the legislature that where the people of a county desired to do so, they could by adopting this act (Ill. Rev. Stat. 1973, ch. 23, pars. 2681 et seq.) establish and maintain a detention home to assist the juvenile court of that county in caring for dependent and delinquent children, and that when such home is established, its maintenance should not be subjected to the possibility of being crowded out by other county purposes * * *"

In City of Des Plaines v. Metropolitan Sanitary District of Chicago, 48 Ill. 2d 11, the Metropolitan Sanitary District of Greater Chicago was not held subject to local zoning. This case seemed to rely on the district's power of eminent domain. The court felt that exemption for the district from the city zoning plan was necessary to fully effectuate the powers of condemnation which were granted to the district by section 8 of "AN ACT to create sanitary districts and to remove obstructions in the Des Plaines and Illinois Rivers." (Ill. Rev. Stat. 1973, ch. 42, par. 327.) A more recent similar case, dealing again with sanitation, was People ex rel. Scott v. North Shore Sanitary District, 132 Ill. App. 2d 854. In this case the court rejected the argument that City of Des Plaines v.

Metropolitan Sanitary District of Greater Chicago, supra, applied only to property acquired by eminent domain. The court said at page 858:

> "* * * [W]e find no support in the opinion for the conclusion that it is applicable only to property acquired by eminent domain. The opinion refers to the property involved as having been purchased and the court in buttressing its argument on the power of eminent domain is indicating that one municipality can not properly defeat the exercise of the powers of another municipality. Whether the property is acquired voluntarily or by eminent domain is not an appropriate distinction since the exercise of the power of eminent domain usually contemplates bona fide efforts of voluntary purchase before resort to condemnation."

In O'Connor v. City of Rockford, 3 Ill. App. 3d 548, reversed on other grounds, 52 Ill. 2d 360, it was determined that a city in establishing a sanitary landfill was not subject to county zoning rules. It thus can be argued that Ogle County, when establishing a county detention home, is not subject to municipal zoning. The court in the O'Connor case, relied on considerations similar to those

found in City of Des Plaines v. Metropolitan Sanitary District of Chicago, supra. The court decided that the city of Rockford was not subject to the provisions of the Winnebago County zoning ordinance when engaged in the function of locating a sanitary landfill pursuant to statutory authority which conferred the power of eminent domain. The court construed section 11-19-10 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11-19-10) as granting such power of eminent domain. It must be noted that the city's rights to the property in question were actually acquired by private negotiation with the owner and not by condemnation action. The court stated at page 551:

> "The important consideration is that the city had the right to condemn private property for the use in question and not whether the city in the particular case actually resorted to condemnation."

In 1938, the Illinois Supreme Court, in Decatur Park District v. Becker, 368 Ill. 442, ruled that where a local governmental unit had statutory authority, whether general or specific, to undertake projects, the prohibitions of a city zoning ordinance did not apply. The court pointed out at page 447 that statutory authority gave a park district the power to locate parks; and that a city is given authority to adopt a zoning ordinance, but that

"the legislature did not empower cities to exclude parks from residential districts". The court concluded that "the two statutes should be construed" so that both "will be given effect in their respective fields of operation".

There are overwhelming precedents in many other States supporting various types and degrees of governmental zoning exemptions for county jails and detention facilities. Metro Dade County v. Parkway Towers Condominium Ass'n., (Fla. App.) 281 So. 2d 68 (1973), cert dis. (Fla.) 295 So. 2d 295 (1974); General State Authority v. Moosic, 10 Pa. Commonwealth 270, 310 A. 2d 91 (1973).) In particular, there are such cases concerning construction of juvenile detention homes in California (Bailey v. L.A. Co., 46 Cal. 2d 132, 293 P. 2d 449 (1956), and Virginia (Wicker Apartments, Inc. v. Richmond, 199 Va. 263, 99 S.E. 2d 656 (1957).) (See, also, Green County v. Monroe, 3 Wisc. 2d 196, 87 N.W. 2d 827 (1958); State ex rel. Helseth v. Dubose, 99 Fla. 812, 128 So. 4 (1940); Annotation, 61 A.L.R. 2d 970.) Further related cases involving governmental zoning exemptions, in other States, are listed in Comment, Balancing Interests to Determine Governmental Exemption From Zoning Laws, at 1973 Illinois Law Forum 125, 130 (footnotes 35-42), and include

Georgia, Ohio, Missouri and Vermont.

A review of the applicable case law indicates that if a governmental unit is acting within its statutory grant of power, it is not subject to zoning restrictions imposed by a local municipality. Ogle County is clearly performing a function authorized by statute when it establishes a detention home in accordance with the County Detention Home Act, supra. Further, it has been established that the county need not have acquired the property by eminent domain. (See, People ex rel. Scott v. North Shore Sanitary District, supra, at 858.)

The recent trend of cases in Illinois and other States also demonstrates an attempt at balancing interests represented by exempting a governmental unit from a zoning law with the interests represented by enforcing the zoning law. (Rutgers v. Piluso, 60 N.J. 142, 286 A. 2d 697.)

In this regard, certain policy arguments underlying the zoning ordinance are to be considered, but are usually given limited scope and deference if opposed by an urgent need on the part of the governmental unit seeking exemption. As pointed out by the Illinois Supreme Court in the Flick case, the establishment of a county detention home is a most important function of the county. People ex rel. Flick v. Chicago, Burlington & Quincy R.R. Co., supra, at 512.

As discussed above, the recent trend of cases has uniformly indicated that a unit of local government in exercising a governmental function may disregard a local zoning ordinance; however, the holdings have been qualified by the principle that such exemption will be forbidden if the contemplated function would involve arbitrary or unreasonable action. City of Des Plaines v. Metropolitan Sanitary District, supra; O'Connor v. City of Rockford, supra; Appelbaum v. St. Louis County, 451 S.W. 2d 107 (Mo. 1970); Nehrbas v. Incorporated Village, 2 N.Y. 190, 140 N.E. 2d 241.

It is my opinion that you must determine whether or not the proposed location of the Ogle County detention home within the particular single-family residential area would, due to the particular facts and circumstances, be arbitrary and unreasonable. Subject to your determination that the location of the detention home at the proposed site would not be arbitrary or unreasonable, I am of the opinion that Ogle County is not subject to the regulations of the zoning ordinance of the city of Rochelle in order to "provide and establish, support and maintain a detention home for the temporary care and custody of dependent, delinquent or truant children." It should be clearly stated, however, that the views expressed in this opinion are strictly limited to the facts and circumstances involved here.

Very truly yours,

ATTORNEY GENERAL