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STATE OF ILLINOIS
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FILE NO. S-496

CONSTITUTION:
Local Government
Cook County is a home rule county and has home rule ordinance powers throughout the county.

COPY

Franklin D. Yoder, M.D.
Director
Department of Public Health
525 W. Jefferson
Springfield, Illinois 62702

Dear Director Yoder:

I have your letter wherein you state:

"The Department of Public Health is responsible for the administration of the 'Recreational Area Licensing Act' (Chapter 111 1/2, Paragraphs 761 through 791) and for the administration of the 'Mobile Home Park Act' (Chapter 111 1/2, Paragraphs 711 through 736).

"Section 30 (Paragraph 790) of the Recreational Area Licensing Act provides:

'This Act does not apply within the jurisdiction of any home rule unit.'

"Section 26 (Paragraph 736) of the Mobile Home Park Act provides:

> 'This Act does not apply within the jurisdiction of any home rule unit.'

"I respectfully request your opinion as to whether these two Acts apply to a municipality, under 25,000 population, which is not a home rule unit but which municipality is within Cook County, which is a home rule unit."

Section 6(a) of Article VII of the Illinois Constitution of 1970 provides:

> "(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. 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."

Section 1 of Article VII of the Illinois Constitution of 1970 defines municipalities as follows:

> "'Municipalities' means cities, villages and incorporated towns.' * * *"

Cook County has a chief executive officer elected by the electors of the county (Ill. Const., Art. VII, sec. 4(b)) and is a home rule unit. See, 6th Ill. Const. Con., Verbatim Transcript, No. 91, July 23, 1970, pp. 190-191.

Until July 1, 1971, the effective date of the Illinois Constitution, Cook County and other home rule units had only the power authorized by grant of authority from the General Assembly. (See, 14 I.L.P., Counties, sec. 18 (1968); Dillon, Municipal Corporations, vol. 1, p. 448 (5th ed. 1911)). Section 6(a) has altered that balance of power. Under that section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs. In short, a home rule unit can now act unilaterally and is no longer dependent on the state for a grant of authority.

Thus, both the state and home rule units may initiate legislation. This dual system of power is not without its problems. For example, conflict between state legislation and local legislation is most difficult to resolve. Baum, The Scope of Home rule: The views of the Con-Con Local Government Committee, 59 Ill. Bar Journal 814, 829 (1971).

In your letter you refer to two state statutes in which the General Assembly by identical language provided:

> "This Act does not apply within the jurisdiction of any home rule unit."
>
> Ill. Rev. Stat., 1971, ch. 111 1/2, pars. 736 and 790.

It seems clear that the 77th General Assembly was keenly aware of the problem of conflict between state legislation and home rule unit legislation. The General Assembly's solution was to provide that the two state statutes to which you refer would not apply within the jurisdiction of any home rule unit. With reference to Cook County, the General Assembly is saying that these two laws will not apply within any territory that can be reached by the home rule powers of Cook County.

By the word "jurisdiction," the General Assembly meant the area over which a home rule unit has legislative authority and power. "Jurisdiction" is defined as:

> "'Jurisdiction,' as applied to a state, signifies the authority to declare, and the power

> to enforce, the law, as well as the territory within which such authority and power may be exercised."
>
> Sanders v. St. Louis and N.O. Anchor Line, (Mo., 1889) 10 S.W. 595, 597.

> "Jurisdiction of the village commission is the power to act."
>
> Campbell v. City of Plymouth, 293 Mich. 84, 86; 291 N.W. 231, 232.

> "Again, in Arnold v. Shields, 5 Dana, 22, the court, by Chief Justice Robertson, said:
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> > 'Jurisdiction, unqualified, being as it is, the sovereign authority to make, decide on, and execute laws . . .'"
>
> Meyler v. Wedding, 107 Ky. 685, 697; 60 S.W. 20, 24 (dissenting opinion).

You ask whether the two acts, you refer to in your letter, apply within a Cook County municipality that is not itself a home rule unit.

Home rule counties, i.e., Cook County, do have power within municipalities. In other words, Cook County has home rule powers on a county-wide basis not just in the

unincorporated areas. This principle is implicit in section 6(c) of Article VII of the Illinois Constitution of 1970 which reads:

> "(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction."

Section 6(c) had its origin in the Majority Report of the Committee on Local Government, Sixth Illinois Constitutional Convention. In the Majority Report, section 6(c) was designated as section 3.3. Section 6(a) was designated as section 3.1(a).

There follows excerpts from the Majority Report discussion of section 3.3:

> "County home-rule powers granted by paragraph 3.1(a) embrace the entire county, including areas within municipal boundaries. In many cases, the extension of county authority into municipal territories will be beneficial and fully acceptable to city officials. An example is the operation of a county hospital and county health services for all residents of the county, including city dwellers. In other cases, however, city officials may object

> to the assertion of county authority within municipal boundaries, and there may be differences or actual conflicts and inconsistencies between municipal legislation and county legislation. Some provision must be made to resolve these potential disagreements and conflicts.
>
> * * *
>
> "Nor does paragraph 3.3 prevent home-rule counties from assuming a wide range of new county-wide powers. A home-rule county can act within a municipality as long as there is no conflicting municipal ordinance. * * *"
>
> Majority Report, Committee on Local Government, 6th Ill. Const. Con., pp. 72, 76.

Chairman Parkhurst, in leading the discussion of section 3.3 on the floor of the Constitutional Convention stated:

> "3.3 refers to home rule powers exercised by a county only--only. Not statutory powers. If a home rule power is exercised by a county, it is intended, it is intended by 3.3 that that power could be exercised county-wide--county-wide--the issuance of bonds, the incurring of debts, the licensing, the taxing could be county-wide, not just within the unincorporated area. This is the distinction between the minority report and the majority report."
>
> 6th Ill. Const. Con., Verbatim Transcript, No. 91, July 23, 1970, pp. 109-110.

The substance of the Minority Report Parkhurst referred to was that counties would have home rule power only in unincorporated areas of the county. (Minority Proposal No. 1F, Committee on Local Government, 6th Ill. Const. Con., pp. 39-46). This proposal was not accepted but instead the Sixth Illinois Constitutional Convention accepted the majority proposals embodied in section 6(a) and 6(c) of the Illinois Constitution of 1970.

Thus, Cook County has home rule powers throughout the county. If, however, a county ordinance, passed pursuant to a county's home rule powers, conflicts with a municipal ordinance, the latter prevails.

The wording of section 6(a) and 6(c) was changed somewhat on first reading and by the Committee On Style and Drafting but these changes were for the most part stylistic and did not change this basic principle; a home rule county has home rule power throughout the county, including municipalities, whether they be home rule or non-home rule municipalities.

Thus, the regulatory provisions of the two state acts you refer to in your letter do not apply to any municipality in Cook County, because by their terms these statutes do not apply within the jurisdiction of a home rule unit. Ill. Rev. Stat., 1971, ch. 111 1/2, pars. 736 and 790.

I note that section 25 of "An Act to provide for, license and regulate mobile homes and mobile home parks and to repeal an Act named herein," [hereinafter referred to as the Mobile Home Park Act], (Ill. Rev. Stat., 1971, ch. 111 1/2, par. 735), provides:

> "'An Act in relation to the licensing and regulation of trailer coach parks,' approved July 13, 1953, as amended, is repealed effective midnight, April 30, 1972."

Section 26 of the Mobile Home Park Act (Ill. Rev. Stat., 1971, ch. 111 1/2, par. 736) contains the home rule unit exclusion provision quoted and discussed above.

The interaction of sections 25 and 26 has caused some confusion because of two possible constructions. Either

"An Act in relation to the licensing and regulation of trailer coach parks," [hereinafter referred to as the Trailer Coach Park Act] (Ill. Rev. Stat., 1969, ch. 111 1/2, par. 158, et seq.) is (1) repealed throughout the State of Illinois, or (2) is repealed within non-home rule areas of the state only and remains the law within home rule units.

If the first construction is adopted, then the Mobile Home Park Act applies within non-home rule areas only and home rule units are left to regulate mobile home parks as they see fit. However, if the second construction is adopted, then the Mobile Home Park Act applies outside of home rule areas and the Trailer Coach Park Act applies within home rule units.

In my opinion, this latter construction would result in absurd consequences.

> "It is a familiar rule of statutory construction that if the language employed admits of two constructions, one of which makes the enactment absurd, if not mischievous, while the other renders it reasonable and wholesome, the

> construction which leads to an absurd result should be avoided."
>
> Kloss v. Suburban Cook Co. Sanatarium, 404 Ill. 87, 97.

Therefore, I am of the opinion that the Trailer Coach Park Act (Ill. Rev. Stat., 1969, ch. 111 1/2, par. 158, et seq.) is repealed throughout the State of Illinois and that the Mobile Home Park Act (Ill. Rev. Stat., 1971, ch. 14 1/2, par. 711, et seq.) applies only within non-home rule areas; thus, home rule units are left to regulate mobile homes and mobile home parks as they deem necessary.

This opinion is in harmony with the intent of the legislature.

The Mobile Home Park Act had its origin in the 77th General Assembly as Senate Bill 198. Section 26 of the Mobile Home Park Act was added to Senate Bill 198 as an amendment. (1 Legislative Reference Bureau, Legislative Synopsis and Digest, Digest No. 27, p. 107 (1971)). Thus, it was the intent of the sponsors of Senate Bill 198 that the

Trailer Coach Park Act would be repealed throughout the state. The addition of section 26 does not change this intent but underscores the 77th General Assembly's desire to respect the new home rule powers given to Cook County and other home rule units. The 77th General Assembly wanted to avoid a conflict between state legislation and local legislation.

In conclusion, I am of the opinion that the Mobile Home Park Act (Ill. Rev. Stat., 1971, ch. 111 1/2, pars. 711, et seq.) and the Recreational Area Licensing Act (Ill. Rev. Stat., 1971, ch. 111 1/2, pars. 761, et seq.) do not apply to a municipality, which is not a home rule unit, but which municipality is within Cook County, or other home rule county.

Very truly yours,

ATTORNEY GENERAL