



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1377

COUNTIES:
Zoning Agricultural Uses

Honorable Nolan Lipsky
State's Attorney
Menard County
Petersburg, Illinois 62675

Dear Mr. Lipsky:

I have your letter requesting my opinion "as to whether or not a county could in any manner regulate the use pertaining to agricultural structures either in the form of declaring such use to be a special use or a conditional use".

Section 1 of "AN ACT in relation to county zoning" [hereafter referred to as the County Zoning Act] (Ill. Rev. Stat. 1977, ch. 34, par. 3151) sets out the Act's purposes and the county's power to control buildings and land usage and states in part:

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" * * * Provided, that permits with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes shall be issued free of any charge.
* * *

The powers by this Act given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted; nor shall they be exercised so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that such buildings or structures for agricultural purposes may be required to conform to building or set back lines:
* * * . "

The courts of Illinois have stated that counties lack the power to regulate agricultural uses through zoning. (Cities Service Oil Co. v. County of Lake (1962), 26 Ill. 2d 176; County of Grundy v. Soil Enrichment Materials Corp. (1973), 9 Ill. App. 3d 746; County of Lake v. Cuneo (1947), 333 Ill. App. 164. In County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045, 1047, the court stated: "The statute clearly provides that there can be no regulation of any land or buildings used for agricultural purposes except that building or set back lines may be imposed".

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The Act does not limit the county's zoning power with respect to land, but rather with respect to the land's use. "[T]he county's power to require permits for buildings on agricultural land is only prohibited when the buildings are used for agricultural purposes". People v. Husler (1975), 34 Ill. App. 3d 977, 979.

"Agricultural purposes" was defined by the Supreme Court in People v. City of Joliet (1926), 321 Ill. 385.

"'Agriculture' is defined as the 'art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In the broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheesemaking, sugar making, etc.' Unless restricted by the context, the words 'agricultural purposes' have generally been given this comprehensive meaning by the courts of this country". 321 Ill. at 389.

The Appellate Court has included the spreading of digested sludge as fertilizer on farmlands, the use of land to accommodate the facilities necessary to transport sludge to farmlands, and poultry hatcheries within the definition of "agricultural purposes". County of Grundy v. Soil Enrichment Materials Corp., 9 Ill. App. 3d 746; County of Lake v. Cushman (1976),

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40 Ill. App. 3d 1045.

As the courts of Illinois have broadly construed the term "agriculture", it is therefore my opinion that the building of a hog confinement structure is an agricultural use whose regulation by zoning is not permitted by section 1 of the County Zoning Act.

Very truly yours,

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