OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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November 4, 1999

FILE NO. 99-020

COUNTIES:
Jurisdiction Over Property Subject
to an Annexation Agreement

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The Honorable James W. Glasgow
State's Attorney, Will County
14 West Jefferson Street
Joliet, Illinois 60432

Dear Mr. Glasgow:

I have your letter wherein you inquire regarding jurisdiction over property which is located in an unincorporated area of Will County, and which is subject to a municipal annexation agreement and was contiguous to the municipality's corporate boundaries when the agreement was executed. Specifically, you have inquired whether the municipality: (1) may require municipal zoning permits for improvements undertaken on the property that is the subject of the annexation agreement; (2) may require municipal building permits for construction that occurs on that property; (3) is required to provide municipal fire

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protection services to that property; (4) is required to provide municipal police protection services to that property; (5) is required to provide municipal water and sewer service to that property; and (6) may require the payment of municipal taxes by the owners of property that is subject to an annexation agreement. For the reasons hereinafter stated, it is my opinion that: (1) a municipality may require a zoning permit for improvements undertaken on property which is contiguous to the municipality's corporate limits and is subject to an annexation agreement; (2) a municipality may require building permits for construction undertaken on such property; (3) a municipality is not required to provide fire protection services to such property; (4) a municipality is not required to provide police protection services to such property; (5) a municipality is not required to provide water and sewer service to such property; and (6) a municipality may not levy municipal taxes against such property.

Pursuant to Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et seq. (West 1998)), the corporate authorities of a municipality may enter into an annexation agreement with the owner or owners of property in an unincorporated area of the county. (65 ILCS 5/11-15.1-1 (West 1998).) Under the terms of such an agreement, the property owner and the municipality may agree to seek annexation of the land which is

the subject of the agreement to the municipality at such future time as the land becomes contiguous to the municipality. In return, the municipality may agree, inter alia, to zone the land in a particular manner, to limit increases in permit fees required by the municipality, to grant utility franchises for such land or to abate property taxes on the land. (65 ILCS 5/11-15.1-2 (West 1998).) Prior to its execution, the corporate authorities of the municipality are required to conduct a public hearing on the annexation agreement. After such hearing, the agreement may be executed by the mayor or village president subsequent to the adoption of a resolution or ordinance directing such execution. (65 ILCS 5/11-15.1-3 (West 1998).) The provisions of the annexation agreement are then binding upon the municipality, the property owner and their successors in interest for a period not to exceed 20 years. (65 ILCS 5/11-15.1-1, 11-15.1-4 (West 1998).) The property, however, does not become annexed to the municipality by virtue of the agreement. Rather, appropriate proceedings must be initiated to annex the property in accordance with article 7 of the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq. (West 1998)).

With respect to your specific inquiries, section 11-15.1-2.1 of the Municipal Code (65 ILCS 5/11-15.1-2.1 (West 1998)) provides, in pertinent part:

> "Annexation agreement; municipal jurisdiction.
>
> (a) Property that is the subject of an annexation agreement adopted under this Division is subject to the ordinances, control, and jurisdiction of the annexing municipality in all respects the same as property that lies within the annexing municipality's corporate limits.
>
> (b) This Section shall not apply in (i) a county with a population of more than 3,000,000, (ii) a county that borders a county with a population of more than 3,000,000 or (iii) a county with a population of more than 246,000 according to the 1990 federal census and bordered by the Mississippi River, unless the parties to the annexation agreement have, at the time the agreement is signed, ownership or control of all property that would make the property that is the subject of the agreement contiguous to the annexing municipality, in which case the property that is the subject of the annexation agreement is subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as property owned by the municipality that lies within its corporate limits." (Emphasis added.)

Under subsection 11-15.1-2.1(b) of the Municipal Code, counties that border Cook County, including Will County, retain jurisdiction over property in unincorporated territory which is subject to an annexation agreement, except if, at the time the annexation agreement is signed, the parties to the annexation agreement have ownership or control of all property that would make the property that is the subject of the agreement contiguous

to the annexing municipality. If the property that is the subject of the annexation agreement is contiguous to the annexing municipality, as is the property in question, then the property becomes "subject to the ordinances, control, and jurisdiction of the municipality in all respects". Otherwise, a municipality that is a party to an annexation agreement has not been granted any authority over the unincorporated property.

You have inquired, firstly, whether an annexing municipality may require municipal zoning permits for construction undertaken on property in unincorporated Will County that is included in an annexation agreement and was, when the agreement was signed, contiguous to the municipality. As previously noted, subsection 11-15.1-2.1(b) of the Municipal Code provides that such property "is subject to the ordinances, control, and jurisdiction of the municipality in all respects the same as property owned by the municipality that lies within its corporate limits". Although zoning ordinances and the permits used to enforce compliance therewith are not expressly referred to in subsection 11-15.1-2.1(b) of the Code, the language of that section is certainly broad enough to encompass those land use regulations. In order to respond fully to your question, however, it is also necessary to consider the provisions of section 11-13-1 of the Illinois Municipal Code. (65 ILCS 5/11-13-1 (West 1998).)

Section 11-13-1 of the Municipal Code, inter alia, authorizes a municipality's extraterritorial exercise of its zoning powers in certain circumstances:

" * * *

> The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. However, if any municipality adopts a plan pursuant to Division 12 of Article 11 which plan includes in its provisions a provision that the plan applies to such contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality, then no other municipality shall adopt a plan that shall apply to any territory included within the territory provided in the plan first so adopted by another municipality. No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted 'An Act in relation to county zoning', approved June 12, 1935, as amended. No municipality may exercise any power set forth in this Division 13 outside the corporate limits of the municipality with respect to a facility of a telecommunications carrier defined in Section 5-12001.1 of the Counties Code. If a municipality adopts a zoning plan covering an area outside its corporate limits, the plan adopted shall be reasonable with respect to the area outside the corporate limits so that future development will not be hindered or impaired; * * *
>
> * * * "

(Emphasis added.)

The zoning powers enumerated in section 11-13-1 concern the height and bulk of buildings; the setback of property from property lines; the limitation of intensity of use of lot areas and the area of open space; the classification, regulation and restriction of the location of trades and industries and the location of buildings for industry, business and residence uses and the division of a municipality into districts to accomplish the foregoing.

It is a fundamental rule of statutory construction that where there is a general statutory provision and also a specific statutory provision, both of which relate to the same subject, the specific statutory provision is controlling and should be applied. (People v. Villarreal (1992), 152 Ill. 2d 368, 379.) Section 11-13-1 of the Code grants to a municipality the general power to zone outside of its corporate limits "within contiguous territory not more than one and one-half miles beyond the [municipality's] corporate limits and not included within" another municipality, except in counties which have enacted a zoning ordinance, as has Will County. Section 11-15.1-2.1 of the Code, however, expressly provides that with respect to property which is subject to an annexation agreement and which was contiguous to the municipality when the agreement was signed, the municipality may apply its ordinances to the property to the same extent as it

may regulate property within its boundaries. Because section 11-15.1-2.1 of the Code relates only to property which meets these conditions, it should be treated as creating an exception to the general rule governing municipal zoning in unincorporated areas set out in section 11-13-1 of the Code. Therefore, based upon the specific language of section 11-15.1-2.1 of the Code, it is my opinion that municipal zoning ordinances may be applied to property in unincorporated Will County which is contiguous to the municipality and is subject to an annexation agreement, the adoption of a county zoning ordinance notwithstanding. (See generally Ill. Att'y Gen. Op. No. 98-013, issued July 13, 1998, citing County of Will v. City of Naperville (1992), 226 Ill. App. 3d 662.) In enforcing its zoning ordinances within the contiguous property, a municipality may require a zoning certificate, a zoning permit or other documentation that would certify that the municipality's zoning ordinances permit the construction of the type of improvement proposed. City of Galena v. Dunn (1991), 222 Ill. App. 3d 112, 121.

Secondly, you have inquired whether a municipality may require a municipal building permit for construction undertaken on property that is the subject of an annexation agreement. As with zoning ordinances, the language of section 11-15.1-2.1 is inclusive enough to encompass building construction standards.

Reference must also be made, however, to the provisions of section 11-30-4 of the Illinois Municipal Code (65 ILCS 5/11-30-4 (West 1998)), which grants municipalities the authority to impose building construction requirements:

> "The corporate authorities of each municipality may prescribe the strength and manner of constructing all buildings, structures and their accessories and of the construction of fire escapes thereon."

The language of section 11-30-4 of the Code grants to municipalities the authority to adopt construction requirements for buildings located within their corporate boundaries. Section 11-15-2.1 of the Code authorizes municipalities to apply their ordinances to contiguous unincorporated property which is subject to an annexation agreement. Consequently, it is my opinion that in the circumstances you have described, a municipality may regulate the manner of constructing buildings on land which is subject to an annexation agreement. Incidental to the authority to regulate and prescribe the manner of constructing buildings is the implied authority to require building permits. (City of Galena v. Dunn (1991), 222 Ill. App. 3d 112, 120; Salem National Bank v. City of Salem (1964), 47 Ill. App. 2d 279, 284.) Therefore, it is my opinion that municipalities may require building permits for construction undertaken on such property.

Your third inquiry concerns whether municipalities must provide municipal fire protection services to contiguous property that is the subject of a municipal annexation agreement. At common law, municipalities in Illinois owed no duty to the public to provide fire protection. (Doe v. Calumet City (1994), 161 Ill. 2d 374, 385.) Sections 11-6-1 and 11-6-2 of the Illinois Municipal Code (65 ILCS 5/11-6-1 (West 1998); 65 ILCS 5/11-6-2 (West 1998)), however, provide:

> "The corporate authorities of each municipality may provide and operate fire stations, and all material and equipment that is needed for the prevention and extinguishment of fires, and may enter into contracts or agreements with other municipalities and fire protection districts for mutual aid consisting of furnishing equipment and man power from and to such other municipalities and fire protection districts." (Emphasis added.)

> "The corporate authorities of each municipality may contract with fire protection districts organized under 'An Act to create Fire Protection Districts,' approved July 8, 1927, as now or hereafter amended, which are adjacent to the municipality, for the furnishing of fire protection service for property located within the districts but outside the limits of the municipality, and may supply fire protection service to the owners of property which lies outside the limits of the municipality and may set up by ordinance a scale of charges therefor. * * *" (Emphasis added.)

Under section 11-6-1 of the Code, municipalities are authorized, but not required, to provide and operate fire stations. Moreover, under section 11-6-2 of the Code, municipalities are authorized to provide fire protection service to the owners of property which lies outside the municipality's corporate limits and to assess a charge therefor. Based upon the foregoing, it is my opinion that municipalities are authorized, but not required, to provide fire protection services to persons and property located outside their corporate boundaries, including property that is subject to an annexation agreement.

A similar conclusion appertains to the question of whether municipalities are required to provide police protection to property that is subject to an annexation agreement. At common law, municipalities in Illinois owed no duty to the public to supply police protection. (Harinek v. 161 North Clark Street Ltd. Partnership (1998), 181 Ill. 2d 335, 350 (Nickels, J., concurring), citing Santy v. Bresee (1984), 129 Ill. App. 3d 658, 661.) Sections 11-1-1 and 11-1-2 of the Municipal Code (65 ILCS 5/11-1-1 (West 1998); 65 ILCS 5/11-1-2 (West 1998)), however, respectively authorize the corporate authorities of a municipality to adopt and enforce police ordinances and to prescribe the duties and powers of all police officers. Moreover, section 11-1-7 of the Municipal Code (65 ILCS 5/11-1-7 (West 1998)) autho-

rizes the corporate authorities of a municipality to contract with townships and with counties to furnish police protection outside of a municipality's corporate boundaries. Therefore, it is my opinion that municipalities are authorized, but not required, to provide police services to property located outside of the municipalities' corporate limits.

You have also asked whether municipalities are required to provide municipal water and sewer service to property that is the subject of an annexation agreement. Section 11-149-1 of the Municipal Code (65 ILCS 5/11-149-1 (West 1998)) addresses the extraterritorial provision of water and sewer service:

> "The corporate authorities of a municipality may provide by ordinance for the extension and maintenance of municipal sewers and water mains, or both, in specified areas outside the corporate limits. Such service shall not be extended, however, unless a majority of the owners of record of the real property in the specified area petition the corporate authorities for the service." (Emphasis added.)

The Illinois Appellate Court has long indicated that the use of the word "may" in section 11-149-1 implies that the extension of sewer and water service to areas outside of a municipality's corporate boundaries is discretionary. (Exchange National Bank v. Behrel (1972), 9 Ill. App. 3d 338, 341.) Thus, the rule in Illinois is that a municipality is under no duty to

furnish a water supply or sewer service to nonresidents in the absence of a contractual relationship obligating it to do so. (Rehm v. City of Batavia (1955), 5 Ill. App. 2d 442, 449.) Consequently, it is my opinion that a municipality generally is not required to provide water and sewer service to persons or property located outside its corporate boundaries, including property subject to an annexation agreement, unless the terms of the annexation agreement or some other contractual agreement so provide.

Lastly, you have inquired whether a municipality may impose municipal taxes upon the owners of contiguous property which is subject to an annexation agreement. You have not specified any particular taxes as the focus of your inquiry. Section 8-3-1 of the Municipal Code (65 ILCS 5/8-3-1 (West 1998)), however, authorizes municipalities to levy and collect taxes for general corporate purposes. Specifically, section 8-3-1 grants the corporate authorities of a municipality the authority to "* * * levy upon all property subject to taxation within the municipality as that property is assessed and equalized for state and county purposes * * *". (Emphasis added.)

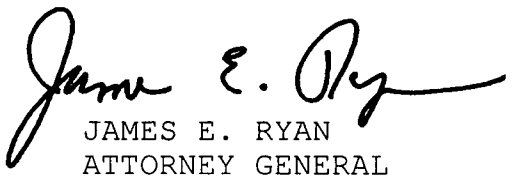
It is well established that taxing statutes are to be strictly construed and their language is not to be extended or enlarged by implication beyond its clear import. (Canteen Corp.

v. Department of Revenue (1988), 123 Ill. 2d 95, 105.) The term "within" commonly means "'inside the limits of'; 'not going outside of'; 'not beyond or exceeding'". (Sacks v. Legg (1920), 219 Ill. App. 144, 148.) Consequently, the language of section 8-3-1 does not suggest that the General Assembly intended for municipalities to have the power to levy taxes against property that is not physically located within the limits of a municipality. Moreover, section 11-15.1-2.1 of the Municipal Code does not expressly refer to the power to tax in addressing the extent to which a municipality may exercise its jurisdiction over property which is subject to an annexation agreement. Therefore, it is my opinion that municipalities may not assess municipal taxes against the owners of property that is the subject of an annexation agreement, unless the statute authorizing the levying of the tax expressly so provides.

You have also noted that because neither property owners nor municipalities are required by statute to notify a county when an annexation agreement is signed, county officials may have no knowledge that property in an unincorporated area has become subject to municipal, rather than county, zoning and building standards, for example. Obviously, attempts by both the county and the municipality to apply their respective ordinances to the same property may result in serious disputes. In the

absence of a statutory requirement therefor, and in order to avoid potential conflicts regarding jurisdiction over the property, I suggest that either the property owners or the municipality provide a copy of the agreement to the county. If a county receives no notice, then disputes concerning the exercise of jurisdiction over such property can only be resolved on a case by case basis.

Sincerely,



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