OFFICE OF THE ATTORNEY GENERAL
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STATE MATTERS:
Authority of Department of Transportation to Convey Property Acquired for South Suburban Airport for Less Than Fair Market Value

INTERGOVERNMENTAL COOPERATION:
Procurement Requirements Applicable to Joint Airport Commission Created by Intergovernmental Agreement

The Honorable David E. Miller
Chair, Airport Transportation
Subcommittee of the House Transportation
and Motor Vehicles Committee
278-S Stratton Office Building
Springfield, Illinois 62706

The Honorable James W. Glasgow
State's Attorney, Will County
121 North Chicago Street
Joliet, Illinois 60432

Gentlemen:

I have your letters regarding the proposed South Suburban Airport (the Airport) in Will County, Illinois. You have asked two specific questions:

(1) Does the Illinois Department of Transportation (IDOT) possess the authority to convey property it has acquired for the Airport project to the Abraham Lincoln National Airport Commission (ALNAC), an entity created pursuant to an intergovernmental cooperation agreement entered into by some 32 municipalities, at no cost or for consideration less than fair market value, to facilitate the construction and operation of an airport under the jurisdiction of ALNAC?

(2) Did ALNAC comply with applicable procurement requirements, if any, when it entered into a memorandum of agreement for the design, construction and operation of the Airport with a joint venture comprised of LCOR Holdings LLC and SNC-Lavalin America, Inc. (the Developers)?

For the following reasons, it is my opinion that:

(1) Under Illinois law, IDOT does not have the authority, without express legislative approval, to convey State-owned land to any entity for less than fair market value. None of the legal opinions provided to me point to any provision of Illinois law that expressly grants such authority to IDOT. This conclusion, however, does not prevent IDOT and ALNAC from pursuing plans to develop the Airport in Peotone. IDOT and ALNAC have other options if they wish to work jointly to develop and operate the Airport. Specifically, IDOT can enter into an intergovernmental agreement with ALNAC to develop and operate the Airport, through which IDOT retains title to the land but allows its use for the Airport. Alternatively, IDOT, working with the Department of Central Management Services, could lease the Airport property to ALNAC.

(2) ALNAC is composed of both home rule municipalities, which possess broad powers to deal with local affairs and are exempt from competitive bidding statutes, and non-home-rule municipalities, which are limited in their powers and clearly subject to competitive bidding statutes. To comply with applicable procurement laws, ALNAC must fulfill the procurement requirements that govern each of its individual members. Thus, ALNAC is bound by the statutory limitations governing its non-home-rule members. The ALNAC development agreement as currently structured does not appear to comply with the requirements imposed by Illinois law on non-home-rule municipalities.

Historical Background and Chronology

Planning for a third major airport to serve the Chicago metropolitan area was spurred by the 1988 release of the Chicago Airport Capacity Study (CACS). CACS concluded that neither Chicago-O'Hare International nor Midway Airports could be expanded sufficiently to meet the projected long-term needs of the metropolitan area and, therefore, that an additional airport would eventually be required to serve the area. CACS suggested four possible sites for additional study as locations for a third airport, including a site in Will County.

Beginning in 1989, Illinois, Indiana and the City of Chicago jointly sponsored the Illinois-Indiana Regional Airport Study (I-IRAP), which initially focused on the possible development of the four sites suggested in CACS. In 1990, the City of Chicago proposed adding a site in the Lake Calumet area. In 1992, the policy committee of I-IRAP recommended Lake Calumet as the preferred site for development, but Chicago subsequently withdrew the site from consideration because of environmental concerns and a lack of local support. Governor Edgar then designated a site near Peotone, in Will County, as the preferred site for further study and planning.

Pursuant to Federal law, IDOT serves as the sponsor for the development of the Master Plan for the Airport. *See generally* 49 U.S.C. §47101 *et seq.* (2000). In 1998, IDOT submitted to the Federal Aviation Administration (FAA) an initial engineering study and an environmental assessment for approval of the development of an airport at the Will County site. In early 2000, IDOT submitted to the FAA a proposal to begin a tiered Environmental Impact

Statement process. In 2002, the FAA released the Tier 1 Final Environmental Impact Statement (for site approval and purchase of land by the State) and subsequently issued a record of decision finding that the Peotone site was a technically and environmentally feasible location, and that the benefits of approving the site so that the State could acquire land to protect against suburban development and to protect the airspace outweighed the adverse environmental impacts.

The Illinois First Program included funding for the commencement of land acquisition for the project. In 2002, IDOT began to acquire land for the "inaugural Airport" (an initial, single runway airport with a passenger terminal containing 4 to 12 gates, together with attendant facilities, that can be incorporated into the final airport layout plan). To date, IDOT has purchased over 1,800 acres of the 4,200 acres designated for the inaugural Airport site, at a cost of approximately $25,000,000. When fully operational as currently proposed, the Airport may comprise an area of up to 24,000 acres, including buffer areas.

In 2002, the FAA approved the Tier 2 Grant Application to conduct the Master Plan Study and Tier 2 Environmental Impact Study for development of the inaugural Airport. As described by the FAA, "[a]irport master planning efforts involve collecting data, forecasting demand, determining facility requirements, preparing environmental action plans, detailing long-range development plans and financial implementation schedules for a specific airport, and preparing Airport Layout Plans (ALP) drawings." Federal Aviation Administration, Advisory Circular No. 150/5070-7, The Airport System Planning Process, at 19 (November 10, 2004). The ultimate objective of an airport master plan is to:

> provide guidelines for future airport development that will satisfy aviation demand in a financially feasible manner, while at the same time resolving the aviation, environmental and socioeconomic issues existing in the community. The Airport Master Plan provides graphic presentation of the future development of the airport and anticipated land uses in the vicinity of the airport; establishes a schedule for development; proposes an achievable financial plan; justifies the plan technically and procedurally; and addresses issues in a way that satisfies local, state and federal regulations.[1]

IDOT, in conjunction with the FAA, is currently engaged in developing the Master Plan for the Airport. Airport master plans typically contain chapters pertaining to various aspects of the development (or improvement) and operation of an airport, including layout plans, facility requirements and project implementation plans. Recommendations for financing and operating an airport are ordinarily set out in the chapter of the Master Plan relating to project implementation. Although several of the chapters of the Master Plan have been released in either draft or final form, the overall document is a work in progress. The planning process has not yet reached the stage at which IDOT has made any public recommendations concerning which agency or entity should be responsible for the actual development and operation of the Airport. ALNAC is seeking that opportunity. Because it has not completed the Master Plan, IDOT has not announced a recommendation as to which entity should undertake the development and operation of the Airport.

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[1] Official South Suburban Airport Project Web Site, "Master Plan Frequently Asked Questions," http://masterplan.southsuburbanairport.com/mp_faq.asp (January 11, 2005).

Summary of Applicable Law - IDOT

Subject to the Federal government's power to regulate aviation nationwide (*see generally* 49 U.S.C. §40103 (2000)), IDOT, acting through its Division of Aeronautics, exercises broad statutory powers with respect to the regulation of aeronautics in Illinois:

> The Department shall regulate and supervise aeronautics within this State, subject to the provisions of this Act. The Department is empowered and directed to encourage, foster, and assist in the development of aeronautics in this State and to encourage the establishment of airports and other air navigation facilities. 620 ILCS 5/26 (West 2004).

Section 27 of the Illinois Aeronautics Act (620 ILCS 5/27 (West 2004)) provides:

> Cooperation with Federal Government and others. The Department shall cooperate with and assist the Federal Government, the political subdivisions of this State, and other states, and others, including private persons, engaged in aeronautics or the promotion of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. To this end, the Department is empowered to * * * avail itself of the cooperation, services, records, and facilities of such agencies, municipalities, and other political subdivisions, federal or otherwise, as fully as may be practicable, in the administration and enforcement of the laws of this State pertaining to aeronautics. The Department shall reciprocate by furnishing to such agencies, municipalities and other political subdivisions, federal or otherwise, its cooperation, services, records and facilities, in so far as may be practicable.

With the exception of projects authorized by the O'Hare Modernization Act (620 ILCS 65/1 *et seq.* (West 2004)), no municipality or other political subdivision of the State, whether acting individually or jointly, may submit an airport project application seeking Federal funding or

assistance unless IDOT first approves the project and project application. 620 ILCS 5/38.01 (West 2004).

In addition to its general powers to regulate and supervise aeronautics in Illinois, IDOT is expressly authorized to provide planning and financial assistance to municipalities and other political subdivisions with respect to the construction and improvement of airports. *See* 620 ILCS 5/32, 34 (West 2004). For purposes of the Illinois Aeronautics Act, the term "municipality" is defined to include:

> any county, city, village, or town of this State and any other political subdivision, public corporation, authority, or district in this State, *or any combination of two or more of the same*, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities. (Emphasis added.) 620 ILCS 5/20 (West 2004).

IDOT initiated the acquisition of property necessary for the inaugural Airport pursuant to section 72 of the Illinois Aeronautics Act (620 ILCS 5/72 (West 2004)), which provides, in pertinent part:

> Acquisition and operation of state airports—Authority to establish state airports. The Department is authorized and empowered, on behalf of and in the name of this State, within the limitation of available appropriations, to acquire by purchase, gift, legacy, lease, condemnation proceedings, or otherwise, property real or personal, for the purpose of establishing and constructing, for the benefit of and use by the public, of airports[.]

Section 77 of the Act (620 ILCS 5/77 (West 2004)) further authorizes IDOT to exercise its powers to acquire property and to develop airports cooperatively or jointly with other units of government.

Accordingly, IDOT could recommend in the Master Plan that the Airport be developed and operated as a State airport under its direct control, or that IDOT develop and operate the Airport jointly with one or more governmental entities, or that another public entity or consortium of entities assume the responsibility for its development and operation. Until the Master Plan is finalized and approved, however, it would be mere speculation to anticipate and opine as to the ultimate role that IDOT, ALNAC or any other entity will have or can have in the development and operation of the Airport.

Summary of Applicable Law - ALNAC

In 2003, the villages of Park Forest, University Park, Bensenville and Elk Grove Village entered into an intergovernmental cooperation agreement creating a joint airport commission under the name "South Suburban Airport Commission" (the Commission). The agreement created the Commission "for the purpose of establishing and operating a regional airport in the south suburban region of northeastern Illinois." As permitted by its terms, some 29 additional municipalities subsequently joined in the agreement. The Commission is comprised of one commissioner selected by each of its member municipalities. The member municipalities have agreed to exercise various statutory powers granted to municipalities to operate airports jointly through the Commission, including those powers granted by article 11, divisions 101 and

103, of the Illinois Municipal Code (65 ILCS 5/11-101-1 *et seq.*, 11-103-1 *et seq.* (West 2004)) and by the Joint Airports Act (620 ILCS 20/0.01 *et seq.* (West 2004)). By resolution adopted on September 13, 2004, the board of directors changed the name of the Commission to the ALNAC. *See* Minutes, Meeting of the South Suburban Airport Commission Board of Directors, dated September 13, 2004, Item V.

Although ALNAC had not yet secured an agreement for the development or operation of the Airport, in November 2003, the Commission solicited bid proposals (RFPs) from airport developers and operators to "lease, finance, develop and operate the new South Suburban Airport for a term of 40 years." As will be discussed more fully below, the Commission eventually selected LCOR-SNC Lavalin Joint Venture as the master developer of the proposed Airport. On September 13, 2004, the Commission and LCOR-SNC Lavalin signed a memorandum of agreement calling for the parties to enter into a master development agreement.

The memorandum of agreement calls for the Developers to develop and operate the entire Airport pursuant to a lease of the underlying real property, together with the "landside improvements" (passenger terminals, parking lots, fueling facilities and the like), from ALNAC. Further, the RFP contemplates that the developers will be responsible for creating the design and development plan for the Airport, including planning, design and engineering of construction, expansion and capital improvements, and architectural, structural, mechanical and other related modifications. The development agreement is necessarily contingent upon ALNAC obtaining a

right to develop the Airport property, as well as its possession of the requisite power to undertake the project.

With respect to the necessary power to undertake this project, municipalities with populations of fewer than 500,000 inhabitants, a classification that includes all of the ALNAC signatories, possess express statutory authority to develop and operate airports outside of their corporate limits. Article 11, division 103, of the Illinois Municipal Code provides:

> Every municipality having a population of less than 500,000 may acquire, own, construct, manage, maintain, and operate, *within or outside the corporate limits of the municipality*, airports and landing fields, together with all land, appurtenances, and easements, required therefor or deemed necessary and useful in connection therewith and in accordance with the purposes expressed in this section, including structures of all kinds. (Emphasis added.) 65 ILCS 5/11-103-1 (West 2004).

Municipalities acting pursuant to division 103 may acquire and hold property for airport purposes (65 ILCS 5/11-103-2 (West 2004)); may make reasonable rules and regulations governing the management and control of the airport facilities (65 ILCS 5/11-103-5 (West 2004)); and may:

> (1) lease all or any part of the municipality's airport, landing field, facilities, and other structures, and fix and collect rentals therefor, (2) fix, charge, and collect rentals, tolls, fees, and charges to be paid, for the use of the whole or any part of the airport or landing field, buildings, or other facilities, (3) make contracts for the operation and management of the airport, landing field, or other air navigation facilities, and (4) provide for the use, management, and operation of the airport, landing field, or air navigation facilities through lessees thereof, or through its own employees, or otherwise. However, no lease for the operation or management of an airport, landing field, or air navigation facilities shall be made for more than one year except to the highest and best bidder, after

> notice of the lease or contract has been given, not more than 30 nor less than 15 days in advance of the date of the lease or contract, by publishing a notice thereof[.] 65 ILCS 5/11-103-6 (West 2004).

Further, section 11-103-10 of the Code (65 ILCS 5/11-103-10 (West 2004)) expressly provides that:

> Municipalities may exercise the powers granted by Sections 11-103-1 through 11-103-9, jointly and cooperatively, provided the conditions upon which the powers are exercised are evidenced by an agreement approved and recorded by their several corporate authorities.

Section 1 of the Joint Airports Act (620 ILCS 20/1 (West 2004)) similarly authorizes counties and municipalities to execute intergovernmental cooperation agreements for the purposes of establishing and operating joint airport commissions.

You have not raised any questions concerning the procedure pursuant to which ALNAC was created or the authority of its constituent members to exercise their common statutory powers to operate an airport cooperatively and jointly. However, ALNAC, by virtue of the powers granted by its constituent members to be exercised through the terms of the intergovernmental cooperation agreement establishing it, clearly possesses sufficient statutory authority to develop and operate an airport in Will County, either in its individual capacity or jointly with the State or other political subdivisions, subject to the conclusions set forth in this opinion. That conclusion does not, however, resolve the specific questions you have asked.

Conveyance of Airport Property

Your first question relates to a proposal for IDOT to convey the Airport property to ALNAC at no cost to facilitate the construction and operation of the Airport by ALNAC. This proposal contemplates that IDOT would enter into an intergovernmental agreement with ALNAC, under which IDOT's only role would be to transfer title to the land the State has already acquired to ALNAC and to continue acquiring land and transferring it to ALNAC. IDOT would not be involved with ALNAC in the development and operation of the Airport and, thus, the Airport would not be a State project. This analysis applies equally to any conveyance of State property to a third party for consideration of less than fair market value.

My analysis has carefully considered several memoranda of law expressing opinions regarding the questions you have posed.[2] The earliest memorandum, and that to which the succeeding memoranda generally respond, was prepared by IDOT's office of chief counsel and is dated January 29, 2005. In summary, IDOT's chief counsel concluded that under the current law: (1) IDOT does not possess the authority to transfer or lease land acquired for the

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[2] Memorandum from Ellen Schanzle-Haskins, Rich Christopher and Jon Tweedt, Office of Chief Counsel, to Tim Martin, Secretary of Transportation (January 19, 2005).

Memorandum from Ronald S. Cope, Michael Best & Friedrich LLP, to Congressman Jesse L. Jackson, Jr. (April 13, 2005).

Memorandum from Wildman, Harrold, Allen & Dixon LLP, to Congressman Jesse L. Jackson, Jr. (April 29, 2005).

Memorandum from Burton S. Odelson and Mark H. Sterk, Odelson & Sterk, Ltd., to Congressman Jesse L. Jackson, Jr. (May 4, 2005).

Memorandum from Professor Laurie Reynolds, University of Illinois College of Law, to Congressman Jesse L. Jackson, Jr. (July 20, 2005).

In addition to these memoranda, we have also reviewed memoranda prepared by the Illinois General Assembly Legislative Reference Unit and the Congressional Research Service.

Airport to ALNAC at no cost or for less than fair market value; and (2) if IDOT and ALNAC entered into a "joint venture," as contemplated by the Illinois Aeronautics Act (620 ILCS 5/1 *et seq.* (West 2004)), pursuant to which IDOT would permit the use of the property for development of the Airport by ALNAC, ALNAC's preexisting development agreement with the Developers would be invalid for failure to comply with the Illinois Procurement Code (30 ILCS 500/1-1 *et seq.* (West 2004)).

IDOT based its first conclusion on several opinions in which my predecessors advised that a transfer of an interest in property by a governmental entity for less than fair market value is tantamount to a prohibited gift of the value or difference in value of the property. *See, e.g.*, 1980 Ill. Att'y Gen. Op. 144; 1977 Ill. Att'y Gen. Op. 151.[3]

In response to the IDOT memorandum, Mr. Ronald S. Cope of Michael Best & Friedrich LLP prepared a memorandum dated April 13, 2005, and concluded that IDOT may enter into an intergovernmental cooperation agreement to transfer the Airport property to ALNAC for development without the payment of fair market value. Similar conclusions were expressed in a May 4, 2005, memorandum prepared by Messrs. Burton S. Odelson and Mark H. Sterk of Odelson & Sterk, Ltd., as well as in an April 29, 2005, memorandum prepared by Wildman, Harrold, Allen & Dixon LLP. These memoranda further conclude that because

[3] While I reach the same ultimate conclusion, I do not follow IDOT's reasoning. Because my opinion is based on the express terms of sections 76 of the Illinois Aeronautics Act (620 ILCS 5/76 (West 2004)) and 7.1 of the State Property Control Act (30 ILCS 605/7.1 (West 2004)), I do not believe that an analysis of the previous Attorney General opinions is necessary.

ALNAC, and not IDOT, awarded the contract for developing the Airport, the selection process was not subject to the Illinois Procurement Code.

The Wildman Harrold, Michael Best & Friedrich, and Odelson & Sterk memoranda address the possibility of an outright transfer of the property under section 76 of the Illinois Aeronautics Act, which provides:

> *Whenever the Department determines that the public interest does not require the continued use of* an airport, restricted landing area or other air navigation facility or *real property acquired or set apart for public airport purposes, on behalf of the State*, or that the same is no longer beneficial or useful to the public, *or that the same may be more economically operated for the benefit and use of the public by* any private party or by the United States, any agency or Department thereof, any state government other than the government of this State, or *any municipality, or other political subdivision of this State, or of any other state, the Department may dispose of any such property*, airports, restricted landing areas or other air navigation facilities, *by sale, lease or otherwise*, to the Federal Government, any agency or department thereof, or to any state government, or *to any municipality or other political subdivision of this or any other State government*, or to private persons, *for aeronautical purposes or purposes incidental thereto, subject to the laws of this State governing the disposition of property of this State.* Whenever the Department determines that the benefits to the public may be greater by so doing, it may lease, for a term not exceeding 10 years, any space, area, improvements, equipment, accommodations or facilities on such airports, restricted landing areas or other air navigation facility, and it may confer the privilege of concessions of supplying upon such airports; restricted landing areas, or other air navigation facilities goods, commodities, things, services and facilities; provided, that in each case under this section in so doing the public is not deprived of its rightful, fair, equal and uniform use thereof. (Emphasis added.)

Under their reasoning, with which I disagree, IDOT's statutory authority to dispose of property acquired for airport purposes to a municipality or political subdivision "by sale, lease or otherwise" is sufficiently broad to encompass a donation of property to ALNAC at no cost or for an amount significantly less than fair market value.

Such an expansive interpretation of the term "otherwise" runs counter to the recognized principles of statutory construction, particularly the doctrine of *ejusdem generis*, which provides that when general words immediately follow particular and specific words in a statute, the general words must be construed to include only things of the same quality and character as the particular and specific terms. *Sverid v. First National Bank of Evergreen Park*, 295 Ill. App. 3d 919, 922 (1998). Thus, the phrase "otherwise [dispose of]" in section 76 of the Act, being restricted in meaning by the terms that it follows, must be construed as connoting monetary consideration, and cannot be expanded to include a gift or donation of property. *See Taylor v. Phillips*, 147 Ga. 761, 95 S.E. 289, 292 (1918) (a sale implies a consideration; and, when the power is given to sell, and the person conveys without consideration or one merely nominal, this constitutes a breach of the trust, and none of the participants therein can take anything by such conveyance).

Courts applying the doctrine of *ejusdem generis* to similar terminology have reached an analogous conclusion. In *Garland v. Smith*, 164 Mo. 1, 64 S.W. 188 (1901), the beneficiary of a trust argued that a grant of power to "to sell, mortgage, incumber, lease, or

otherwise dispose of" certain real property during her lifetime included the power to make a gift of the property. The court stated:

> [I]t is asserted that the phrase "or otherwise dispose of" was sufficient to confer [on the beneficiary] an absolute and untrammeled power of disposition even if the words "sell, mortgage and incumber" were not sufficient to authorize a gift of the lot to defendant. On the other hand, plaintiff maintains that such general words as these, used as they are after specific terms, must be confined to things *ejusdem generis* with those preceeding them. We are quite clear that the phrase referred to did not enlarge the power of appointment so as to include a gift of this property. *Garland*, 164 Mo. at 17, 64 S.W. at 191.

In discussing the decision in *Garland*, the Supreme Court of Georgia observed:

> A sale, a mortgage, an encumbrance, a lease, would each be productive of money. [Citation.] A gift is far removed from any of those specified dispositions; consequently the general phrase which followed, "or otherwise dispose of," was properly referred to a disposition of the same character, one which would produce money or its equivalent. *Comer v. Citizens & Southern National Bank*, 182 Ga. 1, 13, 185 S.E. 77, 84 (1935.)

Although the application of the doctrine of *ejusdem generis* to section 76 of the Illinois Aeronautics Act convincingly dispels the argument that IDOT possesses statutory power to convey the Airport property to ALNAC by gift or donation, I would further point out that this analysis of section 76 completely disregards an express limitation placed on IDOT's power to dispose of airport property through the phrase "subject to the laws of this State governing the disposition of property of this State." 620 ILCS 5/76 (West 2004).

Section 7.1 of the State Property Control Act (30 ILCS 605/7.1 (West 2004)) governs the disposal of real property held by the State and its agencies. Section 7.1 provides, in pertinent part:

> (a) Except as otherwise provided by law, *all surplus real property held by the State of Illinois shall be disposed of by the administrator [the Director of the Department of Central Management Services] as provided in this Section.* "Surplus real property," as used in this Section, means any real property to which the State holds fee simple title or lesser interest, and is vacant, unoccupied or unused and which has no foreseeable use by the owning agency.
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> (b) All responsible officers shall submit an Annual Real Property Utilization Report to the Administrator, or annual update of such report, on forms required by the Administrator, by October 30 of each year. The Administrator may require such documentation as he deems reasonably necessary in connection with this Report, and shall require that such Report include the following information:
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> (6) A declaration of any surplus real property. * * *
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> (c) Following receipt of the Annual Real Property Utilization Report required under paragraph (b), the Administrator shall notify all State agencies by December 31 of all declared surplus real property. Any State agency may submit a written request to the Administrator, within 60 days of the date of such notification, to have control of surplus real property transferred to that agency. * * *
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> (d) Any surplus real property which is not transferred to the control of another State agency under paragraph (c) shall be

> disposed of by the Administrator. No appraisal is required if during his initial survey of surplus real property the Administrator determines such property has a fair market value of less than $5,000. If the value of such property is determined by the Administrator in his initial survey to be $5,000 or more, then the Administrator shall obtain 3 appraisals of such real property, one of which shall be performed by an appraiser residing in the county in which said surplus real property is located. The average of these 3 appraisals, plus the costs of obtaining the appraisals, shall represent the fair market value of the surplus real property. *No surplus real property may be conveyed by the Administrator for less than the fair market value.* Prior to offering the surplus real property for sale to the public the Administrator shall give notice in writing of the existence and fair market value of the surplus real property to the governing bodies of the county and of all cities, villages and incorporated towns in the county in which such real property is located. Any such governing body may exercise its option to acquire the surplus real property for the fair market value within 60 days of the notice. After the 60 day period has passed, the Administrator may sell the surplus real property by public auction following notice of such sale by publication * * *. All moneys received for the sale of surplus real property shall be deposited in the General Revenue Fund, except where moneys expended for the acquisition of such real property were from a special fund which is still a special fund in the State treasury, this special fund shall be reimbursed in the amount of the original expenditure and any amount in excess thereof shall be deposited in the General Revenue Fund. (Emphasis added.)

The Property Control Act applies to all real property owned by the State, with the exception of rights of way for State water resources and highway improvements. 30 ILCS 605/1.02 (West 2004), as amended by Public Act 94-405, effective August 2, 2005.

The assertion in their memoranda, including, for example, the Wildman Harrold and Michael Best & Friedrich memoranda, that section 7.1 of the State Property Control Act is

inapplicable to a conveyance under section 76 of the Aeronautics Act presumably stems from a statement in the IDOT memorandum noting, correctly, that section 7.1 of the State Property Control Act is applicable to transfers of State property "[e]xcept as otherwise provided by law," but concluding, incorrectly, that "[s]ection 76 of the Act is an example of another provision of law which would exclude the disposition of the airport from coverage under the State Property Control Act." As I will discuss more fully below, the transfer of the Airport property contemplated by ALNAC is clearly subject to the State Property Control Act.

The Airport property was acquired in the name of the People of the State of Illinois by a department of State government using State funds allocated specifically for the purpose of acquiring land for the eventual development of an airport. In short, it is State property. Nothing expressly or impliedly excludes conveyances of State property made under section 76 of the Illinois Aeronautics Act from the requirements of section 7.1 of the State Property Control Act. In fact, section 76 specifically makes such conveyances "subject to" the laws regulating the disposition of State property. Although section 76 does not reference the State Property Control Act by title, this Act is clearly a "law[ ] of this State governing the disposition of property of this State."[4]

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[4] The Legislative Reference Unit memorandum dated May 13, 2005, specifically agrees with this conclusion, stating: "[I]f that last provision [of section 76] refers to anything, it should refer most directly to the State Property Control Act. If that is correct, an outright gift of the land already acquired * * * apparently would be illegal."

Where a statute is clear and unambiguous, it must be given effect in accordance with its plain meaning. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002). Further, a statute must be construed so that each word or phrase is given a reasonable meaning and not rendered superfluous. *People v. Botruff*, 212 Ill. 2d 166, 175 (2004). An interpretation of section 76 of the Illinois Aeronautics Act that would permit IDOT to convey airport property to ALNAC without complying with section 7.1 of the State Property Control Act, including the requirement of the payment of fair market value for the acquisition of real property deemed surplus to State needs, would render superfluous the phrase "subject to the laws of this State governing the disposition of property of this State."

Taking the analysis one step further, although IDOT is expressly authorized to exercise its powers to aid in the development of an airport jointly or cooperatively with political subdivisions of the State, this authority does not allow IDOT to avoid the specific limitation imposed on the conveyance of State property by section 7.1 of the State Property Control Act so as to allow IDOT to transfer the property to ALNAC for less than fair market value. The mere grant of authority to act jointly or cooperatively to develop an airport does not in any way supersede the application of Illinois law that clearly precludes IDOT from conveying State property for less than fair market value. None of the memoranda reviewed has cited any statute purporting to authorize IDOT to do so, nor has research identified any such provision.

IDOT has ample authority under the Illinois Aeronautics Act to enter into joint or cooperative agreements for the development and operation of an airport. Further, the

Intergovernmental Cooperation section of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, §10) and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.* (West 2004)) provide additional, independent authority for such a cooperative venture. Accordingly, should IDOT elect to proceed jointly to develop and operate the Airport, the property that IDOT has acquired could then properly be *used* for the benefit of the joint venture. With respect to *conveying* ownership of the land from IDOT to another participant, however, merely invoking the principles of intergovernmental cooperation and entering into an agreement with another governmental entity does not allow IDOT to avoid the existing limitations upon its governmental powers.

In opinion No. 85-010, issued July 18, 1985 (1991 Ill. Att'y Gen. Op. 158), Attorney General Hartigan considered whether a junior college district could enter into an intergovernmental cooperation agreement whereby it granted, in return for annual payments, the exclusive use of real property to a third party for a term of 23 years, where the trustees were prohibited by statute from entering into a lease of the property for a term in excess of 20 years. Attorney General Hartigan concluded that the agreement, notwithstanding its denomination as an intergovernmental cooperation agreement, constituted a lease of the property. He further noted that because the Intergovernmental Cooperation section of the Constitution is not a grant of original power, it cannot authorize units of government to enter into agreements the effect of which would be to contravene an existing and explicit statutory prohibition. 1991 Ill. Att'y Gen. Op. 158, 161. Thus, Attorney General Hartigan concluded that the agreement was void.

Applying this reasoning, even if IDOT were to enter into an agreement for the development and operation of the Airport in cooperation with a political subdivision or a private operator, section 76 of the Illinois Aeronautics Act and section 7.1 of the State Property Control Act remain applicable, and require that IDOT comply with these statutory limitations on any conveyance of State property to another participant.

In a memorandum dated July 21, 2005, Professor Laurie Reynolds of the University of Illinois College of Law acknowledged that the specific reference in section 76 of the Illinois Aeronautics Act to statutes governing the disposition of State property posed a potential impediment to a transfer of the property from IDOT to ALNAC. Professor Reynolds, however, suggested that section 34 of the Illinois Aeronautics Act (620 ILCS 5/34 (West 2004)) could provide an "independent legal justification" for a transfer of the property at no cost to ALNAC.[5] Section 34 provides, in pertinent part:

> Financial assistance to municipalities and others. The Department, subject to the provisions of Section 41 of this Act, may render financial assistance in the planning, construction, reconstruction, extension, development, and improvement of air navigation facilities *including acquisition of land*, rights in land, easements including avigation easements necessary for clear zones or clear areas, costs of obstruction removal and airport approach aids owned, controlled, or operated, or to be owned, controlled, or operated by municipalities, other political subdivisions of this State, or privately owned commercially operated airports in Illinois, *out of appropriations made by the General Assembly for any such purpose*. (Emphasis added.)

[5] The Wildman Harrold memorandum referenced above contains a similar argument.

Professor Reynolds stated that:

> while * * * [section 34] specifically mentions 'financial assistance . . . (in the) acquisition of land,' the IDOT-ALNAC transaction would involve a transfer of land already acquired by IDOT. Because the two types of assistance have identical financial implications (that is, a grant of land has the same financial impact as a grant of money equaling the purchase price of the land), however, I believe that a land transfer is likely to qualify as 'financial assistance' under the statute.

Although, from a purely economic viewpoint, this analysis may appear logical, it is inconsistent with fundamental administrative and budgeting principles governing State agencies. This can be illustrated by the following hypothetical: the General Assembly appropriates $25,000,000 to IDOT for the specific purpose of making a grant to a local agency pursuant to section 34 of the Act to purchase property for an airport. IDOT elects instead to transfer property of equivalent value that it already owns to the local agency and to use the appropriated funds to purchase replacement property at a different location for development of another airport. As in Professor Reynolds' analysis, the economic impact of giving the local agency property instead of the appropriated funds is precisely the same. When completed, both IDOT and the local agency will possess $25,000,000 of property for airport purposes.

Under Illinois law, however, administrative agencies such as IDOT obtain their powers to act from the legislation creating them, and their powers are strictly confined to those granted by the General Assembly. *Gilchrist v. Human Rights Comm'n*, 312 Ill. App. 3d 597, 601 (2000). An appropriation may be expended only pursuant to legislative authority and only for the

purposes or objects specified, unless otherwise expressly permitted by law. Ill. Att'y Gen. Op. NP-762, issued May 24, 1974, at 5, citing, *inter alia*, *County of Cook v. Ogilvie*, 50 Ill. 2d 379 (1972). An administrative agency is not free to undermine or ignore the express intent of the General Assembly. *South 51 Development Corp. v. Vega*, 335 Ill. App. 3d 542, 556 (2002), *appeal allowed*, 203 Ill. 2d 570 (2003), *and appeal dismissed*, 211 Ill. 2d 189 (2004).

Clearly, therefore, unless the General Assembly expressly grants such power, IDOT does not have the prerogative to transfer property in lieu of making a grant, or to expend funds that have been appropriated to it for one purpose for a different purpose, regardless of how closely the two purposes may be related and regardless of whether the economic impact of the transactions would be identical. The reasoning equally applies when appropriated funds have been converted into another asset, such as real property.

The Airport property was purchased with funds that were made available to IDOT for the purpose of acquiring land in the name of the State to preserve the option for a future airport, not out of appropriations made by the General Assembly for the purpose of providing financial assistance to airport operators or developers. At the time the General Assembly first provided funding to IDOT to begin land acquisition for the Airport, ALNAC did not yet exist. It would be wrong to presume that the General Assembly, when it provided funding for IDOT to acquire the Airport property, anticipated, much less intended, that the property would ultimately be conveyed to a third party as a form of "financial assistance" without further legislative action. Section 34 of the Act contemplates that IDOT will provide financial assistance for airports from

funds that have been appropriated by the General Assembly for that specific purpose. Regardless of its economic impact, or lack thereof, the proposed conveyance is simply outside the scope of the authority granted to IDOT by section 34 of the Illinois Aeronautics Act.

In response to your first question, therefore, it is my opinion that without legislative approval, IDOT does not possess the authority to convey the Airport property to ALNAC at no cost or for payment of less than fair market value.

Alternatives

Although IDOT has no power to transfer land to ALNAC for less than fair market value, ALNAC and IDOT may consider other alternatives. IDOT has the express authority to enter into joint or cooperative agreements with municipalities and other political subdivisions or agencies to develop and operate airports. 620 ILCS 5/77 (West 2004). If IDOT and ALNAC were to agree to develop the Airport jointly, IDOT could contribute the *use* of the Airport land to ALNAC to facilitate the joint construction and operation of the Airport. Further, IDOT has the authority to provide technical and financial assistance in furtherance of the project, as well as acting as the intermediary for available Federal funding.

It may also be possible for ALNAC to lease the Airport property from the State. As I understand ALNAC's agreement with the Developers, a long-term leasehold is an alternative to fee ownership of the property. Although IDOT's power to lease airport property is generally limited to a term of 10 years (*see* 620 ILCS 5/76 (West 2004)), which may not be of sufficient duration to secure the planned capital improvements, the Director of the Department of Central

Management Services (CMS) has the authority to lease "unused or unproductive land under the jurisdiction of any of the several [Code] departments" on such terms as in his judgment are in the best interests of the State. 20 ILCS 405/405-305 (West 2004).[6] Under this provision, IDOT, in conjunction with CMS, would have the ability to enter into a long-term lease of the Airport property to ALNAC if deemed in the best interests of the State to do so. Thus, if the Governor would like IDOT to work jointly with ALNAC to develop and operate the Airport or to lease the property to ALNAC, he may pursue those options.

If acquisition of fee ownership of the Airport property by ALNAC for less than fair market value is essential to its plans, then ALNAC has little alternative other than to seek legislative relief from the limitations of section 76. The General Assembly, with the approval of the Governor, may authorize the transfer of property from the State to ALNAC on such terms as it deems appropriate.

Additionally, in order for ALNAC to develop the Airport under the plans it has formulated, IDOT must recommend ALNAC as the Airport operator in the Master Plan. Fundamental decisions have yet to be made by IDOT as to how to proceed with the Airport's development and operation. Until those decisions are made, it would be premature to offer any formal opinion as to any alternative proposal.

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[6]The Congressional Research Service memorandum interprets the 10 year limitation to apply only to leases of airport improvements, and not to the airport property. The Wildman Harrold and Odelson & Sterk memoranda concur. I disagree. Moreover, even if section 76 is not applicable to a lease of the underlying airport property, IDOT would be limited to a lease of no more than 5 years under section 2705-555 of the Civil Administrative Code (20 ILCS 2705/2705-555 (West 2004), which applies to leases of property generally.

Procurement Requirements

Your second question concerns whether ALNAC has complied with applicable procurement requirements in entering into a memorandum of agreement pursuant to which ALNAC selected the Developers "to serve as the master developer in a public-private partnership to lease, finance, develop, operate and maintain the [proposed] Airport." Because any ALNAC development of the Airport is predicated on ALNAC obtaining a commitment for acquiring or using the Airport property, and no such agreement or commitment currently exists, determination of this issue is premature. I will, however, comment upon certain aspects of the underlying issues for your guidance.

This question relates to the development agreement entered into by and between the South Suburban Airport Commission (now ALNAC) and LCOR-SNC Lavalin. According to the documents we have received, in November 2003, the Commission solicited bid proposals from airport developers and operators to "lease, finance, develop and operate the new South Suburban Airport for a term of 40 years." Two developers, LCOR-SNC Lavalin Joint Venture and Washington Group, Inc., submitted comprehensive proposals for financing, constructing and operating an airport at the Peotone site. The Commission selected LCOR-SNC Lavalin Joint Venture as the master developer of the proposed Airport on the basis of having submitted the best and most responsive proposal. On September 13, 2004, the Commission and LCOR-SNC Lavalin signed a memorandum of agreement calling for the parties to enter into a master development agreement at a subsequent point in time.

In general terms, the memorandum of agreement assumes that ALNAC will be the owner or lessee of the property needed for the Airport, and that the Developers will develop and operate the entire Airport pursuant to a lease from ALNAC of the underlying real property, together with the "landside improvements." Further, the RFP specifies that, once selected, the developers will be responsible for creating the design and development plan for the Airport, including planning, design and engineering of construction, expansion and capital improvements, and architectural, structural, mechanical and other related modifications. The RFP also states that actual construction services must be bid and contracted for separately by the developers in accordance with Illinois law; it does not, however, specify which Illinois laws are applicable to the construction project.

In its memorandum dated January 29, 2005, IDOT concluded, based on its assumptions that the Airport would be operated as a joint venture between IDOT and ALNAC and that the property would remain under IDOT's ownership, that the development agreement could not be accepted because it did not comply with the Illinois Procurement Code. Under this assumed set of facts, IDOT's conclusion is well founded. The award of contracts for construction projects undertaken to improve State property would ordinarily be subject to the provisions of the Procurement Code.[7] The RFP process did not meet the requirements of the Code.

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[7] The IDOT memorandum states that when ALNAC advertised for the services of its developer, it did not comply with the source selection procedures of the Illinois Procurement Code (30 ILCS 500 (West 2004)) and the Architectural, Engineering, and Land Surveyors Qualifications Based Selection Act (30 ILCS 535 (West 2004)).

The RFP, however, appears to contemplate a different set of circumstances: (1) that ALNAC will either own the Airport property or have a long-term lease for the use of the property before development begins; and (2) that although the developers will be responsible for coordinating the construction and eventual operation of the Airport, the improvements constructed for the Airport will become the property of ALNAC, subject to the leasehold interests of the developers as the operator. Under this set of facts, the development would appear to constitute a public work constructed for and on behalf of ALNAC, in its capacity as the representative of the several municipalities which created it, and not a public work of the State or IDOT. Therefore, the Illinois Procurement Code, which governs only contracts entered into by State agencies, would not apply to the development.

Municipalities that construct public works also must comply with various statutory requirements that do not govern purely private developments, however. ALNAC, as an administrative entity created pursuant to an intergovernmental cooperation agreement between participating municipalities, derives its powers solely from those municipalities; it possesses no inherent powers. Accordingly, the powers that ALNAC can exercise are limited to those that its individual constituent municipalities may exercise, and ALNAC must comply with whatever requirements and limitations govern those municipalities.

Both home rule and non-home-rule municipalities participate in the intergovernmental cooperation agreement creating ALNAC. Home rule municipalities possess more extensive powers to deal with matters pertaining to their local government and affairs than

non-home-rule municipalities. *See* Ill. Const. 1970, art. VII, §6. For example, the method of procuring contracts is a matter pertaining to the government and affairs of a home rule unit and, therefore, compliance with competitive bidding statutes is not required unless and to the extent that the General Assembly has elected to preempt those powers. *American Health Care Providers, Inc. v. County of Cook,* 265 Ill. App. 3d 919, 926-31 (1994). Further, in certain instances, home rule units are exempted from statutory limitations that are applicable to non-home-rule municipalities. In contrast, non-home-rule municipalities may exercise only those powers granted to them by the Constitution or by statute, together with such implied powers as are essential, not merely convenient, to carrying out their express powers. *East Peoria Waterworks Improvement Project 78-B v. Board of Trustees of Community College District No. 514,* 105 Ill. App. 3d 712, 714 (1982).

In her memorandum, Professor Reynolds concludes that ALNAC is not subject to statutory procurement requirements because its home rule members are not subject to them:

> As interpreted by the courts, the * * * [Intergovernmental Cooperation Act] contemplates a "power of one unit" approach, which means that so long as one of the constituent members of the cooperating government entities has a particular power, the agreement may undertake to exercise that power. [Footnote.] Under that line of reasoning, then, because the home rule units are exempt from compliance with the Illinois Procurement Code, and because numerous home rule units are constituent members of ALNAC, Illinois procurement laws should not apply to ALNAC's activities[.]

Contrary to Professor Reynold's interpretation of intergovernmental cooperation powers, it is my opinion that neither the Intergovernmental Cooperation Act nor the Intergovernmental Cooperation section of the Constitution permits a non-home-rule unit to exercise the powers of a home rule unit through the mechanism of an intergovernmental agreement.

Collectively, the opinions of the Attorneys General comprise the most extensive and comprehensive body of interpretive work addressing intergovernmental cooperation in Illinois. These opinions uniformly take a position contrary to Professor Reynold's view. Although the extent of intergovernmental cooperation powers defies precise delineation, one guiding principle has emerged from these opinions: the Intergovernmental Cooperation section of the Constitution and its statutory counterpart, the Intergovernmental Cooperation Act, are not grants of authority to undertake jointly functions that the cooperating entities cannot undertake individually. *See The Attorney General's Perspective on Intergovernmental Cooperation, in* Intergovernmental Cooperation in Illinois 37, 45 (University of Illinois 1991). As a corollary principle, the power to cooperate intergovernmentally cannot authorize an agreement which would contravene statutory prohibitions or limitations that apply to the participating entities. 1991 Ill. Att'y Gen. Op. 158, 161; 1976 Ill. Att'y Gen. Op. 51, 53.

The cases Professor Reynolds cited in her memorandum contain statements concerning intergovernmental powers that support a broad interpretation of such powers. For example, she quotes *County of Wabash v. Partee*, 241 Ill. App. 3d 59 (1993), a case pertaining to the power of a county to condemn property. Some years prior to the county filing its action, the

court had ruled that the City of Mt. Carmel did not possess the authority to condemn the property in question. The landowner, in his attempt to defeat the county's action on *res judicata* grounds, claimed that an intergovernmental cooperation agreement between the county and the city was a mere subterfuge for the city to obtain the property despite its lack of power to do so. The agreement, however, simply provided that the county would transfer jurisdiction over the street to be built to the city if and when the city annexed the contiguous property. Although the court's comments suggest that intergovernmental cooperation powers should be broadly construed to permit one entity to transfer powers to another, these comments were unnecessary to the resolution of the case, because the court had already determined that the county possessed adequate independent authority to condemn the property, and there was, in fact, no attempt by the county to transfer its condemnation powers to the city. Thus, although the comments referred to a point that was briefed and argued by the parties, the statement by the court suggesting that such a transfer would be permissible was *obiter dictum*. *See People v. Williams*, 204 Ill. 2d 191, 206 (2003).

The two additional cases cited, *County of Peoria v. Capitelli*, 144 Ill. App. 3d 14 (1986), and *Village of Oak Lawn v. Commonwealth Edison Co.*, 163 Ill. App. 3d 457 (1987), are equally unpersuasive. *County of Peoria* concerned an agreement between the county and the city to appoint city attorneys as assistant state's attorneys to prosecute animal control ordinance violations occurring in the city. The authority to prosecute was granted by the appointment; there was no transfer of a power between the units. In *Village of Oak Lawn*, the court held that the

village, pursuant to statute, could properly impose the costs of utility relocation on the utility company for those portions of a joint project between the village and the sanitary district falling within the village's corporate limits. There was no transfer or sharing of powers that would have purported to empower the sanitary district, for example, to impose municipal relocation costs on portions of the project outside the village boundaries.

My predecessors have issued several opinions that, in contrast to these three decisions, focus directly on the issue of transfer or sharing of powers. In opinion No. 86-005, issued June 4, 1986 (1991 Ill. Att'y Gen. Op. 216), Attorney General Hartigan concluded that a consortium of home rule and non-home-rule municipalities could create and utilize a consolidated municipal bond fund because both classes had the authority to issue bonds and to incur debt. Attorney General Hartigan pointed out, however, that although home rule municipalities have broad constitutional powers to incur debt except as specifically limited by the Constitution or properly enacted legislation, non-home-rule municipalities could participate only if they complied with all applicable prerequisites to the issuance of bonds, despite the fact that the home rule participants would actually perform the function of issuing bonds on behalf of all participants. In other words, the home rule municipalities' powers could not be transferred to or shared by the participating non-home-rule municipalities.

In opinion No. 98-014, issued July 13, 1998, Attorney General Ryan concluded that, although counties and home rule municipalities could participate in a joint, group health insurance program established by intergovernmental agreement, non-home-rule municipalities

could not, because they were not granted the statutory power to self-insure. Non-home-rule municipalities could not obtain the power to self-insure, in the first instance, by "sharing" that power with entities that possessed it. Similarly, in opinion No. 00-015, issued October 24, 2000, Attorney General Ryan concluded that a township could not avoid obtaining referendum approval for a recycling program by entering into an intergovernmental agreement with a county that had the statutory authority to provide recycling programs. He stated:

> With respect to whether a township can provide for such services through an intergovernmental agreement with the county, although article VII, section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq. (West 1998)) authorize the sharing and joint exercise of powers by units of local government, they are not an independent grant of authority and cannot authorize an entity to do that which is not otherwise authorized or permitted by law. See, e.g., Ill. Att'y Gen. Op. No. NP-636, issued October 17, 1973; Ill. Att'y Gen. Op. No. NP-637, issued October 17, 1973; Ill. Att'y Gen. Op. No. NP-712, issued March 7, 1974; 1978 Ill. Att'y Gen. Op. 165; 1991 Ill. Att'y Gen. Op. 158.

I concur in my predecessors' interpretations.

Section 11-103-10 of the Municipal Code allows municipalities to exercise their statutory powers to operate airports jointly. That section neither expressly nor impliedly removes the limitations imposed on municipalities by other laws. It simply permits municipalities to exercise those specific powers set out in the previous sections of that division cooperatively. The language of that section has remained virtually unchanged since its enactment by the Revised Cities and Villages Act of 1941 (1941 Ill. Laws (vol. 2) 19). The delegation of the power to act

jointly and cooperatively was precisely the type of grant of legislative authority that was required to avoid the proscriptions of Dillon's Rule[8], and which the Intergovernmental Cooperation section of the Illinois Constitution of 1970 was intended to abrogate. When the General Assembly enacted section 11-103-10, however, home rule and intergovernmental cooperation were mere concepts that would not be incorporated into Illinois law for another thirty years. There could have been no intention on the part of the legislature to expand the powers of cooperating municipalities beyond those granted elsewhere in the Code or to waive the limitations imposed by the laws.

Accordingly, it is my conclusion that ALNAC is bound by the statutory limitations governing its non-home-rule members. Its home rule members cannot authorize ALNAC to exercise their home rule powers on behalf of the other participating municipalities if doing so would contravene statutory limitations applicable to the non-home-rule members.

Because of these limitations, the election by ALNAC to utilize a single contractor for all aspects of the development and operation of the proposed Airport creates potentially insurmountable hurdles. Illinois laws concerning the planning and construction of public works do not lend themselves readily to design/build projects. They are generally geared to a more traditional approach, contemplating a contractual design and planning phase followed by the

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[8] Prior to the 1970 Constitution, units of local government were deemed to have only those powers which were specifically granted to them by the Constitution or by statute. The delegates to the 1969 Constitutional Convention discussed these limitations and referred to it as "Judge Dillon's rule," having been set out in 1 J. Dillon, Municipal Corporations, 448 (5th ed. 1911). Although home rule units have been granted additional powers under the 1970 Constitution, non-home-rule units continue to act under the limitations of Dillon's rule.

award of a contract for construction. Thus, the Local Government Professional Services Selection Act (50 ILCS 510/0.01 *et seq.* (West 2004)), which generally requires non-home-rule municipalities to procure architectural, engineering and land surveying services through a qualification-based selection process, requires ALNAC to procure its architectural and engineering services through such a process; only after suitable plans have been prepared by a professional selected pursuant to that Act can ALNAC award contracts for construction. The mere fact that a project or facility is unique does not create an exemption from applicable competitive bidding statutes. *See Smith v. Intergovernmental Solid Waste Disposal Ass'n*, 239 Ill. App. 3d 123, 140 (1992). The bifurcated procedure applicable to the non-home-rule members of the agreement, and hence to ALNAC as the representative of its participating members, simply does not accommodate the award of a design/build contract such as is contemplated by the RFP and memorandum of agreement.

Conclusion

In response to your first question, it is my opinion that the Illinois Department of Transportation does not currently possess the authority to convey the property acquired for the South Suburban Airport project to the Abraham Lincoln National Airport Commission for less than fair market value. However, the Governor and ALNAC can choose to have IDOT and ALNAC develop and operate the Airport jointly, with title to the property remaining with the State. Alternatively, IDOT may choose to lease the property to ALNAC. In response to your second question, it is my opinion that ALNAC must comply with those statutory requirements

that would apply to the constituent members of ALNAC if they were developing the Airport in their individual corporate capacities.

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL