



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan

ATTORNEY GENERAL

File No. 00-016

MUNICIPALITIES:

Use of Funds to Promote or Oppose
School District Boundary Changes

The Honorable Joseph E. Birkett
State's Attorney, DuPage County
505 North County Farm Road
Wheaton, Illinois 60187

Dear Mr. Birkett:

I have your letter wherein you inquire whether it is permissible for a home rule municipality to expend corporate funds either to promote or to oppose a petition brought before the regional board(s) of school trustees seeking to change the boundaries of the school district which encompasses the municipality. For the reasons hereinafter stated, it is my opinion that a change in the boundaries of a school district is not a matter pertaining to the government and affairs of the home rule municipality, and, therefore, in the absence of a grant of statutory authority otherwise providing, the municipality may not

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properly expend corporate funds for the purpose of promoting or opposing such a petition.

You have stated that the home rule village in question lies within the boundaries of a large unit school district which extends into three counties. There have been discussions regarding the possibility of detaching a part of the current district and reorganizing it into a new unit district which would include the village and portions of certain other municipalities now within the unit district. A citizens advisory committee has recommended that the village board seek the detachment. Municipalities have not been granted specific statutory authority to initiate or participate in decisions concerning school district boundaries, nor is such authority necessarily implied from those powers which have been expressly granted.

Article VII, section 6(a) of the Illinois Constitution of 1970 provides, in part:

"* * * 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.

* * *

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(Emphasis added.)

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It has been held that home rule powers extend only to purely local affairs, not those involving other units of local government or the State; thus, the emphasized language of section 6(a) operates as a limitation upon home rule powers. City of Highland Park v. County of Cook (1975), 37 Ill. App. 3d 15, 25.

Matters regarding the organization and boundaries of a school district simply do not pertain to the government and affairs of a municipality which is located within the district. School districts are subject to the plenary power of the General Assembly and are not subject to regulation or control by municipalities. (Board of Education v. City of Peoria (1979), 76 Ill. 2d 469, 475-77.) The mere fact that the school district and the village share a common constituency which may be interested in issues affecting the educational system does not make those issues municipal issues or empower the village to become involved in matters relating to the organization of the school district. The interests of its residents in the school reorganization, so far as the village is concerned, are essentially private interests in matters not within its jurisdiction. Therefore, because a decision to change the boundaries of the school district is not a matter pertaining to the government and affairs of the village, the village's home rule powers cannot authorize it to expend

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corporate funds or otherwise to act in support of or in opposition to the proposed changes in those boundaries.

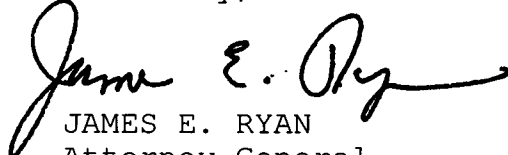
I note, in this regard, that the State and its political subdivisions have specifically been denied the authority to expend public funds in analogous circumstances. Section 9-25.1 of the Election Code (10 ILCS 5/9-25.1 (West 1998)) prohibits the use of public funds to urge any elector to vote for or against any candidate or proposition. Although section 9-25.1 of the Election Code would not ordinarily be applicable to a school district boundary change, since school boundary changes are not submitted to a vote of the electors (except in cases in which all of the territory of a school district is to be annexed to another district), the expenditure of public funds to support or oppose a petition for a boundary change before one or more regional boards of school trustees is clearly analogous to the expenditure of public funds to support or oppose public questions submitted to the electorate. Because political activities in support of or in opposition to a public question are considered essentially private in nature (see Elmhurst ex rel. Mastrino v. Elmhurst (1995), 272 Ill. App. 3d 168, 177), public funds may not properly be expended for those purposes. (See Ill. Const. 1970, art. VIII, sec. 1(a).) The same conclusion must be reached with respect to

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the use of public funds to support or oppose a school boundary change.

It is my opinion, therefore, that a home rule municipality does not possess the authority to expend corporate funds to promote or oppose changes to the boundaries of the school district in which the village is situated.

Sincerely,



JAMES E. RYAN
Attorney General