



TYRONE C. FAHNER

ATTORNEY GENERAL

STATE OF ILLINOIS

SPRINGFIELD

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FILE NO. 82-054

HOME RULE:
Application of Local Records
Act to Home Rule Units

Honorable Jim Edgar
Illinois Secretary of State
Springfield, Illinois 62756

Dear Mr. Edgar:

I have your letter in which you ask whether a home rule municipality is authorized, pursuant to section 6(a) of article VII of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 6(a)), to adopt an ordinance which irreconcilably conflicts with the provisions of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.101 et seq.). For the reasons hereinafter stated, it is my opinion that the enactment of such an ordinance would exceed the powers granted to

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home rule units by the Constitution, and therefore would be invalid.

You state that the city of Evanston has informed the Cook County Local Records Commission that, pursuant to its powers as a home rule unit, it intends to adopt an ordinance governing the maintenance, retention and destruction of public records related to its corporate functions. The proposed ordinance is intended to supersede the application of the provisions of The Local Records Act to such records. Under the terms of the proposed ordinance, the city would no longer apply to the Cook County Local Records Commission for authority to destroy public records maintained by the city, but would instead retain or destroy such records in accordance with its ordinance.

Section 4 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.104) provides, in pertinent part:

"All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.

* * *

"

Section 3 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.103) provides in part:

"Except where the context indicates otherwise, the terms used in the Act are defined as follows:

'Agency' means any court, and all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision.

* * *

'Officer' means any elected or appointed official of a court, county, municipal corporation or political subdivision.

'Public record' means any book, paper, map, photograph, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein. * * *"

Municipalities are clearly "agencies" for purposes of the application of The Local Records Act. See generally, Lopez v. Fitzgerald (1979), 76 Ill. 2d 107.

Section 6 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.106) provides for the creation of Local Records Commissions:

"For those agencies comprising counties of 3,000,000 or more inhabitants or located in or co-terminous with any such county or a majority of whose inhabitants reside in any such county, this Act shall be administered by a Local Records Commission consisting of the president of the county board of the county wherein the records are kept, the mayor of the most populous city in such county, the State's attorney of such county, the County comptroller, the State archivist, and the State historian. The president of the county board shall be the chairman of the Commission.

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For all other agencies, this Act shall be administered by a Local Records Commission consisting of a chairman of a county board, who shall be chairman of the Commission, a mayor or president of a city, village or incorporated town, a county auditor, and a State's attorney, all of whom shall be appointed by the Governor, the State archivist, and the State historian.

* * *

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The Cook County Local Records Commission, established pursuant to section 6, has jurisdiction over the public records of the city of Evanston. Section 7 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.107) provides in part:

"Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

The Commission shall issue regulations which shall be binding on all such officers. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of public records proposed for disposal; procedures for the physical destruction or other disposition of such public records; and standards for the reproduction of such public records by photography or microphotographic processes. Such standards shall relate to the quality of the film to be used, preparation of the public records for filming, proper identification matter on such records so that an individual document or series of documents can be located on the film with reasonable facility, and that the copies contain all significant record detail, to the end that the copies will be adequate.

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In addition, section 32-8 of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 32-8) provides:

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"Tampering with Public Records. A person who knowingly and without lawful authority alters, destroys, defaces, removes or conceals any public record commits a Class 4 felony." (Emphasis added.)

The enactment of an ordinance which purports to divest the appropriate Local Records Commission of its power to regulate the destruction of public records by a municipality would clearly conflict with the provisions of The Local Records Act. The city of Evanston, however, has apparently taken the position that the grant of home rule powers under section 6(a) of article VII of the Illinois Constitution of 1970 is sufficient to permit it to supersede the provisions of The Local Records Act by the enactment of such an ordinance. Section 6(a) provides in pertinent 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 * * *."

Under section 6(a) of article VII of the Illinois Constitution of 1970, home rule units are granted broad powers to enact ordinances regulating their own government and affairs. (People v. Valentine (1977), 50 Ill. App. 3d 447, 451; 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1622 (hereinafter cited as Proceedings). The Illinois Supreme Court has consistently held that an ordinance enacted under the grant of power in section 6(a) of article VII

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supersedes a conflicting statute enacted prior to the effective date of the Illinois Constitution of 1970. (County of Cook v. John Sexton Contractors (1979), 75 Ill. 2d 494, 513, and cases cited therein.) The powers of home rule units, however, relate to their own problems, not to those of the State or of the nation. (7 Proceedings 1621.) A home rule ordinance will supersede a conflicting statute only if the subject of the ordinance is one appropriate for the exercise of home rule powers. Thus, a home rule ordinance which does not pertain to the government and affairs of the home rule unit is invalid (Ampersand, Inc. v. Finley (1975), 61 Ill. 2d 537, 542-43), and ineffective to supersede a statute. See, Bridgeman v. Korzen (1972), 54 Ill. 2d 74.

The validity of the proposed action by the city of Evanston hinges on the nature of the subject matter of the ordinance. If the preservation of local public records is primarily a local concern, a home rule ordinance on the subject would supersede State statutory provisions. (See opinion No. 82-036, issued October 22, 1982.) On the other hand, if the preservation of public records is primarily a matter of state-wide concern, a home rule ordinance conflicting with State statutory provisions on the subject would be invalid. See Ampersand, Inc. v. Finley (1975), 61 Ill. 2d 537, 542-43.

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As was stated in Lopez v. Fitzgerald (1979), 76 Ill.
2d 107, 114-16:

" * * *

The Local Records Act is entitled 'An Act in relation to the destruction and preservation of public records * * *.' It establishes a program for the management of local records in order to promote economy and efficiency in the day-by-day record-keeping activities of local governments and to facilitate and expedite governmental operations (Ill. Rev. Stat. 1975, ch. 116, par. 43.102).

* * *

* * * The title and declaration of purpose for the Local Records Act manifest a statutory concern for determining which local governmental records should or should not be preserved on film. The definition of public records is broad and serves to ensure that no important records will be destroyed. * * *

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To accomplish its statutory purpose, The Local Records Act extends to all units of local government and political subdivisions of the State. The appropriate Local Records Commission is empowered to prescribe uniform regulations pertaining to the preservation of public records. If section 6(a) of article VII of the Illinois Constitution of 1970 were to be construed to permit home rule units to enact individual ordinances governing the maintenance and destruction of public records, then the State would be unable to "ensure that no important records will be destroyed".

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The public policy of the State, as established by the provisions of The Local Records Act, is to preserve public records related to the functions of local public offices for the future reference of those necessarily concerned therewith, and to insure that such records are destroyed only in conformity with uniform procedures. Although the preservation of local records necessarily involves local government, the general policy of preservation of record material is a matter of state-wide, rather than local concern. Because of the nature of the subject matter involved and its comprehensive regulation by the State for many years, it is my opinion that the regulation of the preservation and destruction of public records of local government is not a power pertaining to the government and affairs of a home rule municipality, and therefore is not an appropriate subject for the exercise of home rule powers. See People v. Valentine (1977), 50 Ill. App. 3d 447, 451.

In addition, section 32-8 of the Criminal Code of 1961 provides that any person who knowingly and without lawful authority destroys any public record commits a Class 4 felony. In opinion 82-036, issued October 22, 1982, I advised that a home rule unit is not authorized to enact an ordinance inconsistent with the provisions of the Criminal Code of 1961. Any such ordinance is ineffective to preclude the prosecution and

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conviction of persons violating the provisions of the Criminal Code of 1961.

The word "lawful" means according to law. (Smiley v. East St. Louis Ry. Co. (1912), 256 Ill. 482, 486.) The word "law" means the acts of the General Assembly, in which is vested the legislative power of the sovereign. (Ill. Const. 1970, art. IV, § 8, 9; Burritt v. Comm'rs of State Contracts (1887), 120 Ill. 322.) The word "law" does not ordinarily include municipal ordinances, which do not result from the direct exercise of sovereign or State legislative power. McKinley v. School District of Luzerne Township (S.Ct. Penn. 1955), 118 A.2d 137, 139; City of Cincinnati v. Correll (S.Ct. Ohio 1943), 49 N.E. 2d 412, 413-14; Delta County v. City of Gladstone (S.Ct. Mich. 1943), 8 N.W.2d 908, 909. Thus, the phrase "without lawful authority", as used in section 32-8 of the Criminal Code of 1961, means without statutory authority.

The statutory authority to destroy public records is found in The State Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.4 et seq.), The Local Records Act, and in certain instances, specific statutes relating to particular records. The term clearly does not include municipal ordinances, whether enacted pursuant to the general grant of home rule powers in the Constitution, or under general statutory authority. Therefore, a person who destroys a public record under the authority

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of a municipal ordinance which contravenes The Local Records Act, does so "without lawful authority" and may be prosecuted and convicted under section 32-8 of the Criminal Code of 1961.

It is my opinion that, because the subject of the preservation of local public records does not pertain to the government and affairs of a home rule unit within the grant of powers under section 6(a) of article VII of the Illinois Constitution of 1970, a home rule municipality is not authorized thereunder to enact an ordinance directly conflicting with the provisions of The Local Records Act. Any such ordinance is invalid. Any person who destroys a public record under the terms of such an ordinance may be prosecuted and convicted under section 32-8 of the Criminal Code of 1961.

Very truly yours,


ATTORNEY GENERAL