OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 11-005

ZONING:
Applicability of Municipal and
County Zoning Ordinances
to School Districts

Christopher A. Koch, Ed.D.
State Superintendent of Education
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

Dear Superintendent Koch:

I have your letter inquiring whether Illinois public school districts are subject to either municipal or county zoning ordinances. For the reasons stated below, it is my opinion that public school districts are subject to municipal and county zoning ordinances, except to the extent that compliance with local zoning would frustrate a school district's statutory objectives. If a school district is aggrieved by a local zoning decision, it may seek judicial review in the circuit court.

BACKGROUND

According to the information that you have provided, school districts, municipalities, and counties throughout Illinois are often at odds with respect to the application of local zoning ordinances. Your letter explains that "the Chicago public schools are subject to the zoning code for the City of Chicago[.]" *See* No. 93-C-4328 (N.D. Ill. December 23, 1994) 1994 WL 716300 (1994) (considering whether the Public Building Commission of Chicago, the Chicago Board of Education, and the City of Chicago engaged in intentional racial discrimination by, among other things, placing certain restrictions and conditions on the expansion of a Chicago magnet high school through a zoning ordinance amendment approved by the Chicago City Council). You have asked, however, whether the same principle applies to school districts located within other municipalities and counties.

ANALYSIS

Non-Home-Rule Counties' and Municipalities' Zoning Authority

It is well established that non-home-rule counties (*Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981); *Heidenreich v. Ronske*, 26 Ill. 2d 360, 362 (1962); *Lutheran Social Services of Illinois v. County of Henry*, 124 Ill. App. 3d 753, 754 (1984)) and non-home-rule municipalities (*Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)) possess only those powers that the constitution or statutes expressly grant to them, together with any powers that are necessarily implied therefrom to effectuate the powers which have been expressly granted. Ill. Const. 1970, art. VII, §7. Section 5-12001 of the Counties Code (55 ILCS 5/5-12001 (West 2010)) authorizes

county boards to adopt zoning ordinances (*see* 55 ILCS 5/5-1004 (West 2010)) and section 11-13-1 of the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/11-13-1 (West 2010), as amended by Public Act 97-496, effective August 22, 2011) authorizes municipal corporate authorities to do the same. The Counties Code (55 ILCS 5/1-1001 *et seq.* (West 2010)) and Municipal Code (65 ILCS 5/1-1-1 *et seq.* (West 2010)) do this by, among other things, granting counties and municipalities the authority: (1) to regulate and restrict the location and use of buildings, structures, and land; (2) to establish building or setback lines on or along any street, trafficway, drive, parkway, or storm or floodwater runoff channel or basin in the appropriate circumstances; (3) to divide the territory under their jurisdictions into districts of different classes, according to the use of land and buildings; and (4) to prohibit uses, buildings, or structures incompatible with the character of the districts.

A county zoning ordinance may include "appropriate regulations" to be enforced within the various districts created by the zoning ordinances (55 ILCS 5/5-12007 (West 2010)), and may require applications for permits to erect buildings or structures in any class or classes of districts (55 ILCS 5/5-12008 (West 2010)). Further, zoning boards of appeals may issue variations to county zoning regulations in instances in which there are practical difficulties or particular hardships in carrying out the strict letter of the regulations. 55 ILCS 5/5-12009 (West 2010). A county board may also provide for "special uses" upon public hearing conducted by a board of appeals. 55 ILCS 5/5-12009.5 (West 2010).

In addition to regulating the territory within their corporate limits, municipalities may extend their regulations to the contiguous territory within one and one-half miles of their corporate boundaries, as long as that territory is not included within another municipality. 65 ILCS 5/11-13-1 (West 2010), as amended by Public Act 97-496, effective August 22, 2011. If the county in which the municipality is situated adopts a comprehensive zoning ordinance of its own, however, the municipality's zoning authority is restricted to its corporate limits. 65 ILCS 5/11-13-1 (West 2010), as amended by Public Act 97-496, effective August 22, 2011; *see City of Canton v. County of Fulton*, 11 Ill. App. 3d 171 (1973). Like counties, municipalities may provide for special uses (65 ILCS 5/11-13-1.1 (West 2010), as amended by Public Act 97-336, effective August 12, 2011) and variations from zoning regulations (65 ILCS 5/11-13-4 *et seq.* (West 2010)).

Although section 5-12019 of the Counties Code (55 ILCS 5/5-12019 (West 2010)) and section 11-13-20 of the Municipal Code (65 ILCS 5/11-13-20 (West 2010)) provide that school districts shall have the right to appear and present evidence at zoning commission, board of appeals, or other authorized zoning hearings in prescribed circumstances, there is no statutory provision that either expressly subjects or expressly exempts school districts from compliance with municipal or county zoning ordinances.

Home Rule Counties' and Municipalities' Zoning Authority

Home rule units derive their powers from article VII, section 6, of the Illinois Constitution of 1970. Section 6 empowers a home rule unit to "exercise any power and perform

any function pertaining to its government and affairs[,]" except to the extent that home rule powers may be limited pursuant to section 6. The Illinois courts have recognized home rule zoning ordinances as a valid exercise of home rule authority. *Condominium Ass'n of Commonwealth Plaza v. City of Chicago*, 399 Ill. App. 3d 32, 41 (2010), *appeal denied*, 236 Ill. 2d 552 (2010); *Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 644 (2009), *appeal denied*, 235 Ill. 2d 587 (2010). There is no statutory provision that expressly limits a home rule unit's exercise of its zoning authority with regard to school districts.

School Code

As with non-home-rule units of local government, school districts are also limited to the exercise of those powers expressly granted to them by the Constitution or by statute together with those necessarily implied therefrom. Ill. Const. 1970, art. VII, §8. The School Code (105 ILCS 5/1-1 *et seq.* (West 2010)) sets out the powers of school boards of directors (105 ILCS 5/10-1 (West 2010)) and boards of education (105 ILCS 5/10-10 (West 2010)) (collectively referred to as "school boards"). Under the School Code, school boards are authorized: to "buy sites for buildings for school purposes[,] * * * to buy sites and facilities for school offices[,] * * * [and] [t]o take and purchase the site for a building for school purposes either with or without the owner's consent by condemnation or otherwise" (105 ILCS 5/10-22.35A (West 2010)); to "build or purchase a building for school classroom or instructional purposes" with referendum approval (105 ILCS 5/10-22.36 (West 2010), as amended by Public Act 97-542, effective August 23, 2011); and to "lay out and construct any access road necessary to connect school grounds, on

which a new school is being or is about to be constructed, with an improved road or highway." 105 ILCS 5/10-22.36A (West 2010). In exercising their authority, section 10-22.13a of the School Code (105 ILCS 5/10-22.13a (West 2010)) provides that school boards may "seek zoning changes, variations, or special uses for property held or controlled by the school district." Further, section 10-20 of the School Code (105 ILCS 5/10-20 (West 2010)) provides:

> The school board has the powers enumerated in the Sections of this Article[1] following this Section. This enumeration of powers is not exclusive, but the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. *This grant of powers does not release a school board from any duty imposed upon it by* this Act or *any other law*. (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Illinois Department of Healthcare & Family Services v. Warner*, 227 Ill. 2d 223, 229 (2008). Legislative intent is best evidenced by the language used in statutes. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). If statutory language is clear and unambiguous, it must be given effect as written. *DeLuna*, 223 Ill. 2d at 59. Further, a statute should be construed, if possible, so that no word is rendered meaningless or superfluous. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 368 (2009).

Under the plain and unambiguous language of section 10-22.13a, school boards are expressly authorized to "seek zoning changes, variations, or special uses for property held or

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[1]In this context, the term "Article" refers to article 10 of the School Code (105 ILCS 5/10-1 *et seq.* (West 2010)).

controlled by the school district." This express grant of authority to seek zoning changes, variations, and special uses would be unnecessary if school property was not subject to local zoning ordinances in the first instance. To conclude otherwise would render section 10-22.13a completely superfluous. Further, as previously noted, nothing in the School Code, the Counties Code, or the Municipal Code expressly exempts school boards and the districts that they represent from compliance with local zoning regulations. In contrast, section 10-20 of the School Code provides that school boards remain subject to those duties imposed upon them by other statutory or constitutional provisions. These other duties include those imposed by section 5-12001 of the Counties Code, section 11-13-1 of the Municipal Code, or as an exercise of a county's or municipality's home rule authority. Accordingly, it is my opinion that, as a general principle, school districts are subject to applicable county and municipal zoning ordinances.

Having concluded that school districts are generally required to comply with local zoning requirements, it must also be determined whether there are any limitations on a county's or municipality's exercise of its zoning authority with regard to school districts. As discussed below, the pertinent case law suggests that a local governmental entity should comply with the zoning regulations of its host governmental entity unless doing so would frustrate the statutory objectives of the local governmental entity.

In opinion No. 91-027, issued July 26, 1991 (1991 Ill. Att'y Gen. Op. 59), this office was asked to determine whether a public library district could construct a library building on property it owned that was located within its territorial limits without regard to county zoning

regulations. The opinion concluded that the library district could choose to locate its library without complying with county zoning ordinance classifications, but must comply with zoning regulations relating to the operation of the facility, unless compliance with those regulations would frustrate the fundamental purposes of the library district. In reaching this conclusion, the opinion discussed the pertinent case law and Attorney General opinions,[2] then focused on *Wilmette Park District v. Village of Wilmette*, 112 Ill. 2d 6 (1986).

In *Wilmette*, the Illinois Supreme Court considered whether park districts are exempt from municipal zoning ordinances that could affect park operations. The case arose when the village called for a zoning board hearing regarding the park district's planned expansion of a park, including the addition of more territory and the material expansion of lighting and lighted, nighttime activities at the park. The park district refused to participate in the special use hearing. *Wilmette*, 112 Ill. 2d at 13. In reaching its decision, the Court "recognize[d] the significant competing interests and statutory authority of the park district and the village."

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[2]*See City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago*, 48 Ill. 2d 11, 14-15 (1971), *superseded by statute on other grounds as stated in City of Waukegan v. Illinois Environmental Protection Agency*, 339 Ill. App. 3d 963 (2003) (a sanitary district's exercise of its condemnation powers in the construction of a water reclamation plant were not subject to municipal zoning regulation); *Heft v. Zoning Board of Appeals of Peoria County*, 31 Ill. 2d 266 (1964) (a sanitary district was required to comply with local zoning ordinances, including obtaining a variance, for purposes of constructing a sewage disposal plant); *Decatur Park District v. Becker*, 368 Ill. 442 (1938) (a park district could condemn land located in residential districts for park purposes); *Village of Swansea v. County of St. Clair*, 45 Ill. App. 3d 184 (1977) (county's dog pound not subject to municipal zoning regulations); *People ex rel. Scott v. North Shore Sanitary District*, 132 Ill. App. 2d 854, 858 (1971) (sanitary district's sewage facilities not subject to city zoning regulations); 1982 Ill. Att'y Gen. Op. 114 (county may enforce its floodplain ordinances within a drainage district, unless there is an irreconcilable conflict between the ordinance and the district's statutory powers and duties); 1979 Ill. Att'y Gen. Op. 40 (county zoning ordinance is not applicable to uses made of forest preserve district property, but a county building code would apply unless it would interfere with the district's statutory mandate); 1975 Ill. Att'y Gen. Op. 347 (county could locate a juvenile detention facility within a municipality without complying with zoning classifications).

Wilmette, 112 Ill. 2d at 13. In the absence of an explicit statutory grant of immunity, however, the Court found that the mere fact that the park district had the statutory authority to operate its parks did not mean that the park district could disregard the zoning ordinances of its host municipality. *Wilmette*, 112 Ill. 2d at 14-15. The Court reasoned that the best way to reconcile the competing interests of the village and the park district was for the park district to participate in a special use hearing before the village zoning board, as this cooperation would be "all to the benefit of the community which both government units serve." *Wilmette*, 112 Ill. 2d at 18. The Court was careful to note, however, that intergovernmental cooperation is a two-way street; if the village were to administer its zoning ordinance in an unreasonable, arbitrary, or discriminatory manner to thwart or frustrate the park district's statutory duties, its actions would be subject to further judicial review. *Wilmette*, 112 Ill. 2d at 19.

Thus, the Court struck a balance between the objectives of the village in administering its zoning code and the park district in operating its parks by acknowledging that the park district was subject to the zoning code, but providing for recourse in the event that the village's administration of this code frustrated the park district's statutory duties. This resolution gave effect to the statutory objectives of each public entity to the greatest extent possible. As the Court stated, "the means for achieving cooperation between independent units of local government having competing interests or overlapping responsibilities cannot be reduced to a rigid mathematical formula. Each case must be decided on its particular facts." *Wilmette*, 112 Ill. 2d at 17.

Cases since *Wilmette* have reaffirmed its cooperation principle, requiring units of local government to adhere to local land use regulations when possible without frustrating the entities' statutory objectives. *See, e.g., City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago*, 48 Ill. 2d 11, 14-15 (1971) ("[t]o find that the condemnation power of the [sanitary] district is subject to the restrictions of local municipal zoning ordinances would be to relegate the authority of the district to that of a private land owner, and would thereby frustrate the purpose of the statute" authorizing sanitary districts to condemn property within its corporate limits); *Lake County Public Building Comm'n v. City of Waukegan,* 273 Ill. App. 3d 15, 23-24 (1995) (the city's attempts to enforce its building regulations and collect a permit fee from a county public building commission did not frustrate the commission's statutory purposes); *County of Lake v. Semmerling*, 195 Ill. App. 3d 93, 96-100 (1990), *appeal denied*, 132 Ill. 2d 546 (1990) (requiring the township road commissioner to apply for and obtain an on-site development permit from the county did not significantly interfere with his statutory obligations); *State of Illinois Medical Center Comm'n v. Peter Carlton at Ogden & Oakley, Inc.*, 169 Ill. App. 3d 769, 778 (1988) (the City of Chicago's reissuance of a permit for the construction of a fast food restaurant in a medical center district without the approval of the State of Illinois Medical Center Commission would frustrate the Commission's statutory duty to "prohibit the use of buildings and structures incompatible with the character of the District"); *Village of Swansea v. County of St. Clair*, 45 Ill. App. 3d 184, 187 (1977) (a county's construction of a dog pound pursuant to its statutory mandate is not subject to municipal zoning ordinances because such

ordinances "would allow municipalities to frustrate the statutory program and contravene the intent of the legislature by utilizing zoning regulations to keep dog pounds out of their municipalities").

Based on the statutes and case law, it is my opinion that a school district is generally subject to local zoning regulations. If compliance with the local zoning ordinances would unduly interfere with or otherwise frustrate the achievement of the school district's statutory objectives, then the school district may seek judicial relief. Whether the application of a specific zoning requirement to a school district would unduly interfere with the district achieving its statutory objectives presents a question of fact that cannot be resolved in a legal opinion of the Attorney General. *See* Statement of Policy of the Illinois Attorney General Relating to Furnishing Written Opinions, http://www.illinoisattorneygeneral.gov/opinions/opinionpolicy.pdf.

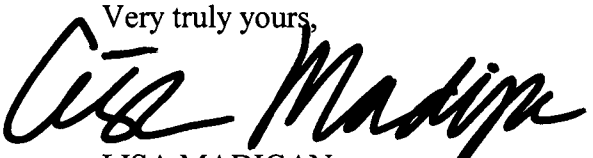
You have posed two scenarios in your letter and asked whether the school districts in those scenarios would be subject to local zoning regulation. Whether compliance with local zoning regulations would interfere with the school districts' statutory purposes in the scenarios you have posed requires the resolution of questions of fact. If a school district contends that compliance with the municipal zoning ordinances would interfere with or otherwise frustrate the school districts' statutory purposes, it should seek judicial review in the circuit court.

CONCLUSION

It is my opinion that school districts are generally subject to local zoning ordinances. To the extent possible, therefore, a school district is required to comply with a

county's or municipality's local zoning ordinances. If the local zoning ordinances interfere with or otherwise frustrate the school district's statutory objectives, however, then the school district should seek judicial review of the application of the ordinance in question.

Very truly yours,



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