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SPRINGFIELD

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FILE NO. S-1421

COUNTIES:
Amenability of Forest Preserve Districts to County Zoning Ordinances and Building Codes

Honorable Dennis P. Ryan
State's Attorney, Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Ryan:

This responds to your request for an opinion as to whether property owned by the Lake County Forest Preserve District is subject to the zoning ordinance and building code of Lake County.

Section 5 of "AN ACT to provide for the creation and management of forest preserve districts in counties having a population of less than 3,000,000" (Ill. Rev. Stat. 1977, ch. 96 1/2, par. 6308) provides:

> "Any forest preserve district organized under this Act shall have the power to create forest preserves, and for that purpose shall have the power to acquire in fee simple in the manner hereinafter provided, and hold lands containing one or more natural forests or parts thereof or land or lands connecting such forests or parts

> thereof, or lands capable of being forested, for the purpose of protecting and preserving the flora, fauna, and scenic beauties within such district, and to restore, restock, protect and preserve the natural forests and such lands together with their flora and fauna, as nearly as may be, in their natural state and condition, for the purpose of the education, pleasure, and recreation of the public. * * *"

This section goes on to provide for the acquisition of land by forest preserve districts for the purposes of connecting forest preserves, containing flood waters and creating roads and parking spaces. Section 6 of the same Act (Ill. Rev. Stat. 1977, ch. 96 1/2, par. 6309) states:

> "Any such District shall have power to acquire lands in fee simple and grounds for the aforesaid purposes by gift, grant, devise, purchase or condemnation and to construct, lay out, improve and maintain wells, power plants, comfort stations, shelter houses, paths, driveways, roadways and other improvements and facilities in and through such forest preserves as they shall deem necessary or desirable for the use of such forest preserves by the public. * * *
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> * * * "

The combined effect of these two provisions is to empower forest preserve districts to acquire land and create forest preserves.

Section 1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, par. 3151) states, in pertinent part:

> " * * *[T]he board of supervisors or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict

> the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board, to regulate and restrict the intensity of such uses, to establish building or setback lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin outside the limits of cities, villages and incorporated towns which have in effect municipal zoning ordinances * * *.
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> * * * "

The scope of the power granted by the above-quoted language is such that if it were to apply to forest preserves created by forest preserve districts, a great deal of the power to decide the location and nature of forest preserves would be in the hands of the counties, and not the forest preserve districts.

An analogous situation was presented to the court in Decatur Park District v. Becker (1938), 368 Ill. 442. The Decatur Park District had a statutory power to condemn land for park and playground purposes. It was insisted that the Park District could only exercise this power in areas appropriately zoned by the city of Decatur. The court, at page 447, said:

> " * * *
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> * * * If appellants' contention is correct, it would be necessary for the appellee to locate its city parks and playgrounds in commercial and industrial zones exclusively. The appellee is given authority to locate parks, and the city is given authority to adopt a zoning ordinance. The legislature did not empower cities to exclude parks from residence districts. The two statutes

> should be construed so that the ordinance of the park district and the zoning ordinance of the city will be given effect in their respective fields of operation. Regardless of the fact that this property was zoned as "A" residence property, the park district could condemn and use it for park purposes.
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This principle was reiterated in City of Des Plaines v. Sanitary District (1971), 48 Ill. 2d 11. In that case, the Metropolitan Sanitary District of Greater Chicago wanted to build a water reclamation plant in the city of Des Plaines. It was the position of the Sanitary District that it could proceed with the proposed use even though the zoning ordinance of the city of Des Plaines prohibited it. The court, at page 14, said:

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> * * * To find that the condemnation power of the 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. If the district is exercising power within the statutory grant, such exercise is not subject to zoning restrictions imposed by the host municipality. * * *
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The rule in the Des Plaines case was applied to a county zoning ordinance in O'Connor v. City of Rockford (1972), 3 Ill. App. 3d 548. The question in that case was whether the city of Rockford could locate a sanitary landfill in an

unincorporated area of Winnebago County without regard to possible violations of the county zoning ordinance. The court held that the city was not subject to county zoning.

Since there is no difference in principle between the cases cited and the situation described in your letter, it is my opinion that your county's zoning ordinance is not applicable to the uses made of forest preserve district property, as long as such uses are consistent with the forest preserve district's statutory mandate.

This does not mean that the forest preserve district can proceed in total disregard of the lawful ordinances of the county of Lake. The rationale of the Schiller Park and Des Plaines cases only applies where there is an irreconcilable conflict between local regulations and clear statutory mandate. Where the statutory mandate and the local regulation are not irreconcilable, effect must, of course, be given to both.

In the case of Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184, a village attempted to prevent the construction of a dog pound by the county. On the authority of the Des Plaines case, the court ruled that the construction was not subject to the village zoning ordinances. The court went on to rule, however, that the county did have to comply with the village's building, sewer, electrical and plumbing ordinances. It said:

" * * *

> * * * The distinction is obvious, for these latter ordinances are not by their very nature capable of thwarting the proposed building project. Rather, such ordinances as these are designed to promote public health and public safety. Thus, in line with our above conclusions, we believe defendant must comply with these ordinances unless such compliance interferes with defendant's functions under the Animal Control Act. * * *
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> * * * "

In accordance with this principle, it is my opinion that the Lake County Forest Preserve District must comply with the county of Lake building code, except where such compliance would interfere with the accomplishment of the Forest Preserve District's statutory mandate.

Very truly yours,

ATTORNEY GENERAL