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SPRINGFIELD

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FILE NO. S-1058

PUBLIC PROPERTY:
Power of County to
Lease Property For
Public Purposes

Honorable John J. Bowman
State's Attorney
DuPage County
207 South Reber Street
Wheaton, Illinois 60187

Dear Mr. Bowman:

This responds to your request for an opinion concerning the authority of a non-home rule county to lease space in a county building to a United States Congressman for use as his local office.

Section 7 of article VII of the Illinois Constitution of 1970 limits the power of non-home rule units of local government to those granted them by law. The authority to sell or lease county property is found in section 24 of "AN ACT to

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revise the law in relation to counties". (Ill. Rev. Stat. 1973, ch. 34, par. 303.) It reads in pertinent part:

"Each county shall have power — * * *

Second — To sell and convey or lease any real or personal estate owned by the county.

* * *

This power to lease county property is limited by section 1(a) of article VIII of the Illinois Constitution of 1970 which provides that: "Public funds, property or credit shall be used only for public purposes". This provision reaffirms the rule laid down in Yakley v. Johnson, 295 Ill. App. 77, that counties may not lease public property for private purposes.

It is evident, therefore, that the County of DuPage may lease space in its county building only if the lease in each instance will serve a public purpose. Because the county building you mention is not the county courthouse, the special limitations provided for in section 1 of "AN ACT to authorize county boards to lease space in courthouses" (Ill. Rev. Stat. 1973, ch. 34, par. 3551) are not applicable.

As I noted in my opinion No. S-625 issued in October 1974, "public purpose" is a term not easily reduced to an

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abstract definition. It has been said that a public purpose is one which has as its object the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare of all inhabitants (Clifford v. City of Cheyenne, (Wyo. 1971) 487 P. 2d 1325; United Community Service v. Omaha Nat. Bank, (Neb. 1956) 77 N.W. 2d 576); or one which confers direct and immediate public benefit of a reasonably general character (Opinion of the Justices to the House of Representatives, (Mass. 1964) 197 N.E. 2d 691); and which not only benefits the community as a whole but is also directly related to the functions of government. Roe v. Kervick, (N.J. 1964) 199 A. 2d 834.

With regard to your specific question, I am of the opinion that DuPage County may lease space in its county building to a United States Congressman for use as his local office. A fundamental requisite of a republican form of government is an on-going opportunity for communication between the people and their elected representatives. A legislator's local office helps to facilitate such contact and as such, it is of obvious benefit to the general public and directly related to the functioning of government.

Very truly yours,

A T T O R N E Y G E N E R A L