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STATE OF ILLINOIS
SPRINGFIELD

October 29, 1980

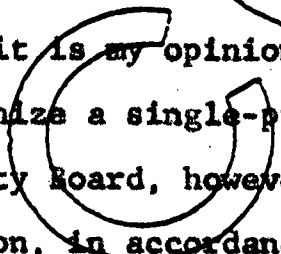
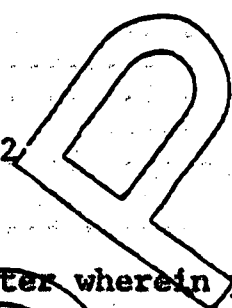
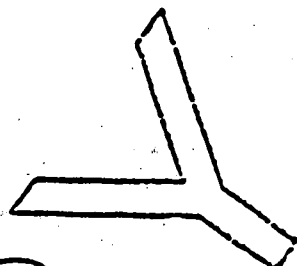
FILE NO. 80-038

COUNTIES:
Public Building Commission

Honorable Thomas J. Homer
State's Attorney
Fulton County
Courthouse
Lewistown, Illinois 61542

Dear Mr. Homer:

I have your letter wherein you inquire whether the Fulton County Board may create a single-purpose Public Building Commission with the authority to build only a new county correctional facility. For the reasons hereinafter stated, it is my opinion that the Fulton County Board may not organize a single-purpose Public Building Commission. The County Board, however, may create a Public Building Commission, in accordance with the statute, and dissolve it after the Commission has completed the building of a particular facility, if the Commission has no outstanding bonds or existing contractual obligations with reference to



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that or any other project.

As you are aware, the Public Building Commission Act (Ill. Rev. Stat. 1979, ch. 85, par. 1031 et seq.) authorizes the creation of Public Building Commissions and defines their rights, powers and duties. Section 2 of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1032), in stating the purpose of their creation, provides in pertinent part that:

"It is hereby found and declared that there exist in many county seats and in many municipalities within this State inadequate and outmoded public improvements, buildings and facilities for the furnishing of essential governmental services and for use in the conduct of local government by the various branches, departments and agencies thereof; * * * it is hereby found and declared to be necessary and desirable to make possible the construction, acquisition, or enlargement of public improvements, buildings and facilities to be made available for use by governmental agencies * * * and that the eradication of these conditions and the construction, acquisition or enlargement of such public improvements, building or buildings and facilities, in the manner hereinafter provided in this Act, is hereby declared to be a public use essential to the public interest." (Emphasis added.)

It is clear from a reading of section 2 that the General Assembly did not intend that a Public Building Commission created pursuant to the Act be limited to a single purpose.

Section 4 of the Act (Ill. Rev. Stat. 1979, ch. 85,

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par. 1034) provides in pertinent part that:

"The governing body of a municipality with 3,000 or more inhabitants or any county seat or the county board of any county may, by resolution adopted by a majority of its members, determine that there is need and that it is in the best interest of the public that a Public Building Commission be organized to exercise the powers and authority prescribed by this Act and it shall therein set forth the name of the Public Building Commission to be created hereunder, provided, however, that the words 'Public Building Commission' shall form part of its name. Where the original resolution for the creation of a Public Building Corporation has been adopted by the governing body of a municipality with 3,000 or more inhabitants, other than a county seat, the resolution shall be submitted to the voters of such municipality at the next general or special election. * * * The presiding officer of the county seat or county board adopting the resolution shall, within 10 days after the date of adoption, or in the case of a municipality with 3,000 or more inhabitants, other than a county seat, the presiding officer of such municipality adopting the resolution shall within 10 days after the date of the approval of the proposition by the voters, cause a copy of the resolution to be published once in a daily newspaper published in the county seat and if there be no newspaper published in that county seat, then in a newspaper published in the county having a circulation in that county seat. * * *

* * *

(Emphasis added.)

Because a county board is not a "municipality" within the definition of subsection 3(d) of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1033(d)), it is not required by section 4 to submit a resolution for creation of a Public

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Building Commission to its voters. Therefore, the Fulton County Board may, by a vote of a majority of its members alone, adopt a resolution for the organization of a Public Building Commission.

As emphasized above, section 4 provides that the county board may initiate the organization of a Public Building Commission "to exercise the powers and authority prescribed by the Act". Thus, it is clearly within the power of the Fulton County Board to organize a Public Building Commission, and, although the Act does not expressly provide that a Public Building Commission has the authority to construct a new county correctional facility, the Act does provide for the construction of local public buildings, which would appear to include a correctional facility. Section 4 does not, however, limit a Public Building Commission created by a county board to any one purpose, but provides, as noted above, that such a Commission be organized "to exercise the powers and authority prescribed by the Act".

The provision concerning the status and powers of a Public Building Commission is found at section 14 of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1004). Therein, a Public Building Commission is defined as:

" * * * a municipal corporation and constitutes a body both corporate and politic, separate and apart from any other municipal corporation

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or any other public or governmental agency."
(Emphasis added.)

As an entity separate and apart from the county, a Public Building Commission has those powers enumerated in subsections (a) through (m) of section 14. Included therein is authority to acquire a title to real property, in fee simple, and to exercise the power of eminent domain (Ill. Rev. Stat. 1979, ch. 85, par. 1044(b)), to demolish, repair, alter and erect new buildings within a Commission's area and within the purpose of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1044(c)), and to borrow money and issue revenue bonds as evidence thereof (Ill. Rev. Stat. 1979, ch. 85, par. 1044(m)). A Public Building Commission, as a body both corporate and politic, is authorized, through its board of commissioners, to exercise the powers and authority prescribed in the Act without direction from the county board which created it.

As a general rule, a county board can exercise only such powers as are expressly granted by the legislature or necessarily implied from the powers so expressly granted.

(Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.)

Consequently, the county board may exercise only the degree of control over the Public Building Commission as is provided

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by the Act. Subsection 14 (a)(2) (Ill. Rev. Stat. 1979, ch. 85, par. 1044(a)(2)) requires approval of certain proposed project sites by the governing board of the county. Moreover, the county board has the authority, under certain specified conditions, to dissolve a Public Building Commission.

Subsection 22.1(b) of the Act (Ill. Rev. Stat. 1979, ch. 85, par. 1052.1) provides that:

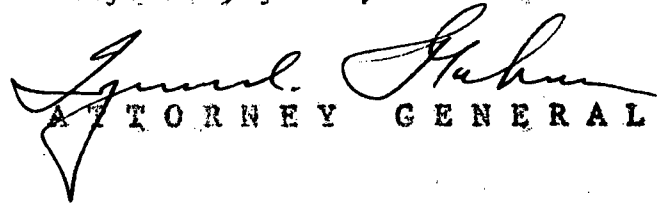
"(b) Any Public Building Commission which has fulfilled the purpose for which it was created, and all bonds issued by it and all of its contractual obligations except personnel contracts have been paid, may be dissolved, upon the filing by the presiding officer of the municipality, county seat or county board which organized such Commission, in the office of the Recorder of Deeds, a copy of a resolution adopted by the governing body of such municipality, county seat or county board approving such dissolution. Upon the dissolution of such Commission pursuant to this subsection, the Treasurer of the Commission shall cause all remaining funds under his control to be transferred to the Treasurer of the municipality, county seat or county which organized the Commission." (Emphasis added.)

Subsection 22.1(b) provides for the dissolution of a Public Building Commission upon the filing of a resolution by the county board when it has fulfilled the purpose for which it was created, that being those purposes stated in section 2 of the Act, and has paid all bonds and contractual obligations with the exception of personnel contracts. Although a county board may dissolve a Building Commission which it organized

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when the above conditions are met, nothing in the Act states or implies that the county board has the authority to limit the Public Building Commission to a single building or project. As a practical matter, however, it appears that, in this particular instance, the county board could adopt and cause to be filed a resolution for dissolution of the Commission after the correctional facility has been constructed and paid for, assuming that there are no outstanding bonds or contracts remaining unpaid.

Very truly yours,


ATTORNEY GENERAL