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FILE NO. 91-019

COUNTIES:

Authority of a County
to Regulate Structures on Land
Used for Agricultural Purposes

Mr. Kirk Brown, Secretary
Illinois Department of Transportation
Room 300
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Brown:

I have your letter wherein you inquire whether counties have the authority to impose design standards on, or to prohibit or regulate the construction of, agricultural buildings and structures on land used for agricultural purposes in flood hazard areas, as required for participation in the National Flood Insurance Program. For the reasons hereinafter stated, it is my opinion that counties currently lack the

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general authority to regulate agricultural structures on land which is used for agricultural purposes.

Section 4102 of the National Flood Insurance Act (42 U.S.C. § 4102) authorizes the Director of the Federal Emergency Management Agency to develop criteria designed to encourage land management in flood-prone areas. In accordance with that Act, a number of regulations have been promulgated to establish a system of management for structures located in those areas which are designated as special flood hazard areas. Section 60.3 of the Federal Emergency Management Agency's regulations (44 C.F.R. § 60.3 (1990)) requires, inter alia, that "communities" participating in the Federal Emergency Management Agency's flood insurance program have the authority to issue permits for all construction and to require the use of designs and construction techniques intended to minimize or eliminate flood damage.

For those areas situated outside of the incorporated cities, villages, and towns of this State, the authority to regulate structures in flood hazard areas lies with the several counties. It is well established that counties possess only those powers which are expressly granted to them by the Constitution or by statute, together with those powers necessarily implied therefrom to effectuate the powers which have been granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Under

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the current Illinois statutes, counties have the authority to regulate construction in mapped, platted, or subdivided parcels of land (Ill. Rev. Stat. 1989, ch. 34, pars. 5-1041, 5-1042) and all other areas located outside the limits of cities, villages, and incorporated towns, exclusive, however, of those structures related to agricultural purposes which are located on farms (Ill. Rev. Stat. 1989, ch. 34, par. 5-1063). While counties possess broad authority to regulate construction projects in unincorporated areas of the county, the Illinois courts have concluded that counties lack the general power to regulate agricultural buildings on land used for agricultural purposes through zoning ordinances. Rather, agricultural land uses are subject to control only in accordance with an express statutory grant. County of Kendall v. Aurora National Bank Trust (1988), 170 Ill. App. 3d 212, appeal denied 122 Ill. 2d 576; 1978 Ill. Att'y Gen. Op. 146.

It is clear, therefore, that counties must have specific statutory authorization in order to impose design standards on or to regulate or prohibit agricultural structures on land which is used for agricultural purposes. Section 5-12001 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-12001), which contains the only statutory provision permitting a county to regulate the use of agricultural lands, provides that a county may not exercise its zoning powers:

" * * *

* * * so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes, * * * or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that * * * structures for agricultural purposes may be required to conform to building or set back lines * * *.

* * * "

Under the language quoted above, a county's authority to regulate agricultural structures is limited solely to establishing building or set back lines. The terms "building lines" and "setback lines", in common usage, refer to lines delineating the minimum distance between a property line or street line and the point at which a building may be erected. (See, E.C. Yokley, Zoning Law and Practice 307 (4th Ed. 1978); R. Anderson, 2 American Law of Zoning 529 (1968)). The power to establish building or setback lines is not the power to impose design standards or to regulate or prohibit construction in an area subject to flood hazards. Indeed, nothing in the language of section 5-12001 of the Counties Code can be construed to permit a county to prohibit or regulate the raising of agricultural structures on land which is used for agricultural purposes, except for the designation of setback lines, or to implement design and building specifications for those types of structures.

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Consequently, it is my opinion that since counties are precluded from regulating all agricultural structures on land used for agricultural purposes, they cannot, therefore, currently satisfy the Federal regulations for participation in the National Flood Insurance Program without the delegation of additional statutory authority by the General Assembly.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL