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FILE NO. 81-035

**CONSTITUTION:
Dissolution of Fire
Protection Districts**

Honorable Philip J. Rock
President
Illinois State Senate
327 State House
Springfield, Illinois 62706

Dear Senator Rock:

I have your letter, pertaining in particular to fire protection districts created pursuant to the provisions of "AN ACT in relation to fire protection districts" (Ill. Rev. Stat. 1979, ch. 127 1/2, par. 21 et seq.), in which you ask the following questions:

- (1) Does section 11(a) of article VII of the Illinois Constitution of 1970 (1970 Ill. Const. art. VII, § 11(a)) authorize units of local government other than municipalities and counties to alter or repeal their forms of government by popular referendum?
- (2) Does section 12 of article VII of the Illinois Constitution of 1970 require the General Assembly to provide by law for a method of dissolving units of local government?

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- (3) If the General Assembly does not provide by law for a method of dissolving fire protection districts, is the governing body or the electors of the district empowered to otherwise effect its dissolution?

For the reasons hereinafter stated, it is my opinion that the answer to each of your questions is no.

As you state in your letter, "AN ACT in relation to fire protection districts" contains no provision which authorizes the dissolution of a district created thereunder. The Act provides only for the disconnection of territory in certain circumstances and in accordance with specific statutory proceedings. (See, e.g., Ill. Rev. Stat. 1979, ch. 127 1/2, pars. 35, 37, 37a, 37c, 38.1, 38.2, 38.3, 38.4.) The absence of a dissolution provision has prompted your inquiry.

In response to your first question, it is my opinion that subsection 11(a) of article VII of the Illinois Constitution of 1970, in the absence of independent statutory authority, does not empower units of local government other than municipalities and counties to alter or repeal their forms of government by popular referendum. Subsection 11(a) provides:

"(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law."

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The Report of the Committee on Local Government of the Constitutional Convention of 1970 contains the following explanation of the purpose of subsection 11(a), which was originally proposed as paragraph 12.1:

"Paragraph 12.1 grants a limited right of initiative to private citizens and to local governing boards. The initiative extends only to actions relating to local governments for which a referendum is required by statute or by the Local Government Article of the constitution. In other words, where this Article or a statute provides that a local government may act only after a favorable vote in a referendum, the referendum can be initiated either by citizens or by the governing board. * * * " (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1753 (hereinafter cited as Proceedings).)

The clear intent of subsection 11(a) is to provide two alternative methods by which referenda may be submitted to the electorate where a referendum is required by the Local Government Article of the Illinois Constitution of 1970 or by statute. The meaning of the term "referendum required by * * * the Local Government Article" is limited to those referendum elections which are required in specified instances by the substantive provisions of the article. (Hoogasian v. Regional Transportation Authority (1974), 58 Ill. 2d 117, 136.) Neither the language of subsection 11(a) nor the commentary and debates of the Constitutional Convention indicates that the section was intended to confer authority to conduct referenda in instances other than those specified in the article or by statute.

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This conclusion is supported by reference to section 8 of article VII of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 8), which provides in pertinent part:

"Townships, school districts[,] special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. * * * ."

Thus, units of local government which are neither municipalities nor counties as defined in the Constitution (1970 Ill. Const., art. VII, § 1) have only those powers granted by the General Assembly. Such units possess no rights or powers except those expressly granted to them or necessarily implied from those which have been granted. (Glenview Rural Fire Protection District v. Raymond (1974), 19 Ill. App. 3d 272, 274; People v. Waukegan State Bank (1932), 351 Ill. 158, 161.) They do not have authority to exercise specific powers which are granted by the Constitution to either counties or municipalities, nor does subsection 11(a) in any way operate as a grant of those specific powers to units to which they are not specifically granted.

In response to your second question, it is my opinion that section 12 of article VII of the Illinois Constitution of 1970 does not create a duty on the part of the General Assembly to enact statutory methods for dissolving units of local government, including fire protection districts. Section 12 of article VII provides as follows:

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"The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government."

In explaining the purpose of section 12, which was at that time identified as paragraph 13 of the Proposed Local Government Article, Delegate John D. Wenus, member of the Committee on Local Government, stated:

" * * * The intention of this section is simply to direct the General Assembly to make general law provision as is presently made in statutes but in a piecemeal manner * * * for the transfer of assets, powers, and functions, and for the payment of outstanding debt in the formation, consolidation, merger, division, dissolution, and change in the corporate boundaries of units of local government.

As you are all aware, when a unit of government is in any way altered--when its boundaries are extended or diminished, when it is consolidated, or when it is dissolved--it may have remaining on the books * * * outstanding bonded indebtedness or other kinds of obligations.

This is a provision to ensure that there shall be provision in statute to implement any necessary transfer, any necessary coverage of obligations, of debts, and to implement the transfer of physical or other kinds of assets, and the necessary powers and functions which initially accrued in the unit which is now in the process of alteration, and to ensure that those powers and functions inhere where necessary in the altered unit.

It is, I submit, comparable in a way to the contract clause of the Federal Constitution, that once some kind of obligation has been incurred, that it shall be honored even though there may be a change in the status of the party or parties initially incurring it.

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(4 Proceedings 3431.)

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It is clear from the language of section 12, as well as the commentary related to its adoption by the Constitutional Convention, that the mandate embodied in its terms was not intended to alter the established rule of law that the creation and control of units of local government is a legislative function which may be conducted in the manner the General Assembly shall deem best to promote the public welfare (Western National Bank v. Village of Kildeer (1960), 19 Ill. 2d 342, 348), and that units of local government can cease to exist only by legislative consent, or pursuant to legislative provision. (People v. Niebreugge (1910), 244 Ill. 32, 86.) Rather, section 12 requires only that when the Constitution or the General Assembly provides for the formation, consolidation, merger, division, dissolution, or change in the boundaries of units of local government, the General Assembly must provide by law for the continuation of the orderly processes of government and the allocation and payment of outstanding governmental debts. It does not require the General Assembly to enact statutes providing for methods of dissolving any or all units of local government.

Lastly, you ask whether, in circumstances where the General Assembly has not provided a method for dissolving a fire protection district, the electors are powerless to effect such a dissolution. Fire protection districts are municipal corporations which derive their existence and power from the General Assembly, and as such, possess no inherent powers to validate acts not authorized within their enabling legislation.

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(Glenview Rural Fire Protection District v. Raymond (1974),
19 Ill. App. 3d 272, 274.) When a municipal corporation has
been created, it may be dissolved or cease to exist only by
legislative consent or pursuant to legislative provision.
(People v. Thomas (1935), 361 Ill. 448, 455.) Therefore, it
is my opinion that fire protection districts may be dissolved
only by an act of the General Assembly, or in a manner provided
by the General Assembly. If the General Assembly fails to
provide for a general or specific method of dissolution of
such districts, the electorate is without power to effect a
dissolution of the district.

Very truly yours,


ATTORNEY GENERAL