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HOME RULE:

**Power of Home Rule Municipality
to Give Sales Tax Revenue to
County**

Honorable Clyde L. Kuehn
State's Attorney, St. Clair County
10 Public Square, 2nd Floor
Belleville, Illinois 62220

Dear Mr. Kuehn:

I have your letter wherein you ask for my opinion concerning the validity of a proposed agreement regarding the sharing of sales tax revenue between the city of Belleville and St. Clair County. Your letter includes the following description of the agreement:

"The agreement would take effect whenever a sales tax generating establishment in an unincorporated territory was to be annexed by the municipality. At the time of annexation the intergovernmental agreement would take effect and sales tax would be shared between the County and the municipality at the predetermined ratio."

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Hence, according to the proposed agreement, whenever the city of Belleville receives sales tax from businesses located in territory which has been annexed by the city, the city will share a portion of the tax with the county. The county is not obligated to provide the city with anything as consideration for the proposed agreement. The city is, in effect, proposing to donate to the county a portion of the tax revenue that the city receives pursuant to the Municipal Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 24, par. 8-11-1). It is my opinion that the city of Belleville does not have the authority to enter into the proposed agreement and that, as a result, such an agreement is invalid.

There is no statutory authority which authorizes the city of Belleville to enter into the proposed agreement. The constitutional and statutory provisions relating to inter-governmental cooperation authorize cities to contract with counties. (Ill. Const. 1970, art. VII, § 10; Ill. Rev. Stat. 1977, ch. 127, par. 741 et seq.) These provisions, however, do not authorize a city to donate city funds to a county. See, 1974 Ill. Att'y Gen. Op. 64, 67.

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As a home rule municipality, Belleville may exercise powers beyond those granted by statutory provisions. Section 6(a) of article VII of the Illinois Constitution states in pertinent part:

" * * * Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." (Emphasis added.)

The "government and affairs" language in section 6(a) was clearly intended as a limit on home rule powers. (Froehlich, Home Rule and Intergovernmental Cooperation and Conflict in Illinois Municipal Law (1978) § 22.11.) A municipality's home rule powers are limited to strictly local affairs, not those involving other municipalities or the county or State. City of Highland Park v. County of Cook (1975), 37 Ill. App. 3d 15, 25.

The Illinois Municipal Code provides several different methods of annexation. (Ill. Rev. Stat. 1977, ch. 24, par. 7-1-1 et seq. and 11-15-1.1 et seq.) Each of these methods of annexation requires the approval of the annexing municipality. None of the annexation methods requires the approval of the county.

A city's annexation of territory may create problems

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for the county. The County Service Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 34, par. 409.1) authorizes counties to impose a tax on persons engaged in the business of selling personal property at retail. The Act, however, provides the following exception:

" * * *

All persons engaged in the business of selling tangible personal property at retail in a municipality shall not be subject to the tax levied by the county board of such county as authorized by this Section with respect to sales made by such persons in the course of so engaging in business in such municipality.

* * *

Businesses located in territory annexed by a city are no longer subject to the county service occupation tax. Therefore, the county may experience some financial problems as a result of a city's annexation.

These problems are county problems; they are not the city's problems. The city is under no legal obligation to assist the county in remedying these problems. In the proposed agreement between the city of Belleville and the county of St. Clair, Belleville, in effect, proposes to make a gift of a portion of the sales tax revenue it receives from businesses located on newly annexed territory. Such a gift would help the

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county recover some of the revenue it loses as a result of annexation. However, because the loss of this revenue is a county problem which Belleville is under no obligation to assist in solving, it is my opinion that the proposed gift does not pertain to the city's government and affairs. Since the gift to St. Clair County does not pertain to Belleville's government and affairs, it must be concluded that Belleville's home rule powers do not authorize it to enter into the proposed agreement.

In summary, it is my opinion that the proposed agreement between the city of Belleville and the county of St. Clair is invalid. Neither Belleville's intergovernmental cooperation powers nor its home rule powers authorize it to donate a portion of its sales tax revenue to the county as proposed in the agreement. The conclusion reached in this opinion is limited to the proposed agreement between Belleville and St. Clair County as described in your letter.

Very truly yours,

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