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FILE NO. 86-005

INTERGOVERNMENTAL COOPERATION:
Powers of Municipalities to
Create and Use a Consolidated
Bond Fund

Honorable Roland W. Burriss
Comptroller
201 State House
Springfield, Illinois 62706

Dear Mr. Burriss:

I have your letter wherein you state that certain home rule and non-home-rule municipalities have proposed the formation, pursuant to the Intergovernmental Cooperation Clause of the Illinois Constitution (Ill. Const. 1970, art. VII, § 10) and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1985, ch. 127, par. 741 et seq.), of an association for the purpose of creating and utilizing a consolidated municipal bond fund. The association would be assisted by the Illinois

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Municipal League, which would function as a coordinator and administrator. You ask whether municipalities may lawfully associate in the manner and for the purposes outlined. For the reasons hereinafter stated, it is my opinion that the constitutional and statutory intergovernmental cooperation provisions grant requisite authority for the establishment and implementation of the described program.

The proposal in question calls for the creation of what is referred to as a "pooled government loan program". The "pool" would be funded by the issuance and sale of revenue bonds by one or more home rule municipalities, the proceeds of which sale would be lent to participating municipalities for various projects serving essential governmental functions. The bonds issued would constitute limited obligations of the issuing municipalities to be satisfied solely from revenues received from borrowing municipalities pursuant to executed loan agreements. The amount raised to fund the pool would be limited to that necessary to serve the projected needs of the participants over a three year period and to pay costs associated with the issuance of bonds and the administration of the fund. Any funds not utilized for loans within that three year period would be used to redeem bonds. Non-home-rule municipalities desiring to participate in the program as borrowers would be required to obtain whatever approval, or to

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follow whatever procedures constitute prerequisites to borrowing by a non-home-rule municipality. It is anticipated that municipalities which elect to participate in the association and the pooled loan program would realize substantial benefits from lower interest rates and from reduced costs of issuance due to the size of the bond issue.

Article VII, section 10 of the Constitution provides in pertinent part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

* * *

(Emphasis added.)

The purpose of the above section was explained in the Report of the Local Government Committee to the Constitutional Convention as follows:

* * *

The purpose of this proposed new section is to provide maximum flexibility to units of local government in working out solutions to common problems in concert with other units of

government at all levels, 'in any manner not prohibited by general law.' Paragraph 11.1 [now article VII, section 10(a)] will permit multi-unit endeavors in all areas of local concern. * * * Units of local government will be allowed to exercise their powers and functions with others or to transfer their powers and functions, one to another or others, according to their needs and circumstances. To this end, participating units will be allowed to incur debt related to the acquisition of property, equipment and appurtenances, and to share in the operating and other costs of intergovernmental activities. Authorizing intergovernmental undertakings 'in any manner not prohibited by general law' vests the power to initiate and carry out these activities at the local level. It will not be necessary for local units to seek statutory enactments before beginning an intergovernmental activity.

* * *

(7 Record of Proceedings, Sixth Illinois Constitutional Convention 1747-48 (hereinafter cited as Proceedings.)

It is clear that article VII, section 10 of the Constitution was intended to give units of local government broad powers to associate and contract together to obtain government services, to combine and transfer functions of government, and to use their credit and revenues to finance intergovernmental activities. (1974 Ill. Att'y Gen. Op. 60, 61; see generally 7 Proceedings 1747-52.) Moreover, reference to the floor debates of the Constitutional Convention's Committee of the Whole concerning the adoption of the Intergovernmental Cooperation Clause establishes that units of government were to be invested under that provision with broad

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power to fund cooperative intergovernmental activities, including the power to lend funds from one unit to another. This is illustrated by the following exchange between Delegate Kamin and Delegate Stahl, a spokesman for the Local Government Committee:

" * * *

MR. KAMIN: * * * Is there any prohibition anywhere else in this entire local government article upon the transfers of revenues amongst these cooperating units of local government? For example, is there anything in here that would prohibit a school district from loaning its funds to another unit of local government or prohibiting another unit of local government from loaning or, in fact, expending its general revenues for the benefit of the school districts?

* * *

MR. STAHL: No, Delegate Kamin. I think the sentence beginning on line 7, 'Participating units of government may use their credit, current revenues, and other resources to pay costs and to service debt related to such intergovernmental activities,' is a specific authorization for the kind of thing [sic] your question is directed to. To put it in sort of simple terms, it makes possible two small towns going together and buying a street sweeper, which neither might be able to afford individually, and to use revenues to either acquire that thing or to finance it over a long term.

* * *

(4 Proceedings 3423.)

In addition to the powers granted by the Constitution, section 3 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1985, ch. 127, pr. 743) provides:

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"Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment."

Section 2 of that Act (Ill. Rev. Stat. 1985, ch. 127, par. 742) provides in part:

"Definitions. For the purpose of this Act:

(1) The term 'public agency' shall mean any unit of local government as defined in the Illinois Constitution of 1970, any school district, any public community college district, the State of Illinois, any agency of the State government or of the United States, or of any other State, any political subdivision of another State, and any combination of the above pursuant to an intergovernmental agreement which includes provisions for a governing body of the agency created by the agreement.

* * *

(Emphasis added.)

Municipalities are units of local government as defined in the Constitution. (Ill. Const. 1970, art. VII, § 1.)

Section 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1985, ch. 127, par. 745) provides:

"Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights,

objectives and responsibilities of the contracting parties."

Intergovernmental cooperation powers under the Constitution and the Act are cumulative.

Units of government are granted the power under the Constitution and the Intergovernmental Cooperation Act to contract and to associate together to undertake governmental activities, to use their revenues and credit to fund such joint undertakings and to combine their resources so that they may more efficiently perform their governmental functions. (See Antiporek v. Village of Hillside, No. 62420, slip op. at 3-4 (Illinois Supreme Court, May 21, 1986); Village of Sherman v. Village of Williamsville (1982), 106 Ill. App. 3d 174, 179; Connelly v. County of Clark (1974), 16 Ill. App. 3d 947, 950-51.) The proposed pooled loan program is, in its simplest terms, a cooperative venture by participating municipalities to "purchase money" for the use of the participants. Home rule municipalities possess the power to incur debt except as limited by the Constitution or by the General Assembly acting in accordance with the provisions of the Constitution (see Ill. Const. 1970, art. VII, §§ 6(a), (d), (k)), which power clearly extends to funding cooperative ventures. The non-home-rule municipalities participating in the program, which do not possess this broad power to incur debt, would obtain approval and authorization sufficient to borrow or to authorize issuance

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of bonds individually. The participating home rule municipalities would merely perform the function of bond issuance for all participants.

The cooperative venture, as proposed, is within the purview of article VII, section 10 of the Constitution and of the Intergovernmental Cooperation Act. Therefore, it is my opinion that the formation of an association by municipalities for the creation of a pooled government loan program and the utilization of the funds raised thereunder are functions authorized by the Constitution and by statute, and thus, both home rule and non-home-rule municipalities may properly take part therein.

Very truly yours,


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