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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-1498

HOME RULE:  
Application of Home Rule Powers  
to the Escheat of Property

Edgar F. Callahan, Director  
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Room 500  
160 North LaSalle Street  
Chicago, Illinois 60601

Dear Mr. Callahan:

I have your letter wherein you request my opinion on two questions relating to the application of home rule powers to the escheat of property. You state in your letter that the city of DesPlaines has passed an ordinance pursuant to its home rule power which provides that unclaimed property escheats to the city. You have asked:

- "1. Does the home rule provision of the Constitution allow a local government to supersede the state Uniform Disposition of Unclaimed Property Act?
2. If local governments have the authority to control the disposition of unclaimed property, is this power limited to property or funds held by the local government or does it extend to unclaimed property within the boundaries of the local government held by private individuals?"

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In my opinion, the home rule provision of the Constitution does not authorize the type of ordinance which you have described.

There are two separate statutory provisions which relate to the disposition of abandoned or unclaimed property. The first, "AN ACT to revise the law in relation to escheats" (Ill. Rev. Stat. 1979, ch. 49, par. 1 et seq.), provides that real and personal property held by a person dying without heirs shall escheat to the county of residence, as provided in the Probate Act of 1975 (Ill. Rev. Stat. 1979, ch. 110½, par. 2-1). The second is the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1979, ch. 141, par. 101 et seq.), which provides that property which is presumed abandoned under the Act shall be delivered to the Director of the Illinois Department of Financial Institutions. (Ill. Rev. Stat. 1979, ch. 141, par. 113.) Property which is held by public offices, public authorities or subdivisions of the State is presumed abandoned if unclaimed for more than seven years. (Ill. Rev. Stat. 1979, ch. 141, par. 108.)

Section 6(a) of article VII of the Illinois Constitution of 1970 provides 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 \* \* \*."

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Thus, the answer to your question depends on whether the law of abandoned property pertains to the local governmental affairs of a municipality. From time immemorial, the disposition of unclaimed property has been the prerogative of the State. (Standard Oil Co. v. New Jersey (1951), 341 U.S. 428, 436.) The State possesses the power to hold and dispose of such property as the successor to the rights of the King. Standard Oil Co. v. New Jersey (1951), 341 U.S. 428, 435; see also, Boghosian v. Mid-City Nat'l Bank of Chicago (1960), 25 Ill. App. 2d 455.

In the report of the Committee on Local Government to the Constitutional Convention (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1621), it was noted that:

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\* \* \* It is clear \* \* \* that the powers of home-rule units relate to their own problems, not to those of the state or the nation. Their powers should not extend to such matters as divorce, real property law, trusts, contracts, etc. which are generally recognized as falling within the competence of state rather than local authorities. \* \* \*"

Illinois courts have adopted two tests for determining whether a matter pertains to local governmental affairs. The first involves determining whether the ordinance intrudes on a traditional power of the State. In People v. Valentine

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(1977), 50 Ill. App. 3d 447, the court held that an ordinance purporting to block expungement of criminal records was not a matter which pertained to local governmental affairs. The court stated at page 451:

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\* \* \* If such an ordinance does exist it must yield to the supremacy of State law in an area where, by the nature of the subject matter and its comprehensive regulation by the State for many years, State power to act must be deemed exclusive. \* \* \*

\* \* \*

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See, Ampersand, Inc. v. Finley (1975), 61 Ill. 2d 537.

A second and related test involves a determination as to whether the subject matter of an ordinance will involve or be entangled with the affairs of other governmental units. The courts have held that where the impact and effect of an ordinance cannot be confined to the municipality, the ordinance does not pertain to local affairs. (Bridgman v. Korzen (1972), 54 Ill. 2d 74; City of Highland Park v. County of Cook (1975), 37 Ill. App. 3d 15.) It is clear that, in the situation you have presented, the DesPlaines ordinance has a substantial impact on the State and to the extent that the property escheated to the city of DesPlaines is property which might otherwise be subject to distribution to the county pursuant to the provisions of "AN ACT to revise the law in relation

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to escheats" (Ill. Rev. Stat. 1979, ch. 49, par. 1 et seq.),  
the ordinance has an effect on the affairs of the county.

Therefore, it is my opinion that the ordinance  
which you have described is invalid. In view of the answer  
to your first question, it is not necessary to discuss your  
second question.

Very truly yours,

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