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FILE NO. 94-024

MUNICIPALITIES:
Requirement that Title Insurance
Reports Reflect Payment of
Document Inspection Fee

Mr. Frank C. Casillas
Director
Department of Financial Institutions
100 West Randolph Street
James R. Thompson Center, Suite 15-700
Chicago, Illinois 60601

Dear Mr. Casillas:

I have your letter wherein you inquire regarding the validity of ordinances adopted by non-home-rule municipalities which require the inspection of documents and the payment of fees prior to the transfer of real property lying within the municipality. Of particular concern to the Department, which regulates title insurance companies (215 ILCS 155/1 et seq. (West 1992)), is a provision in the ordinances which mandates that the requirement of inspection and payment of fees be reflected in title insurance reports. For the reasons hereinafter stated, it is my opinion that the ordinances in question are not valid.

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In February, 1994, the village of Westchester adopted ordinance no. 94-1387, which purports to require that any document evidencing the transfer of ownership of real estate located in the village must be submitted to the village for inspection and review. Upon payment of a fee of \$25, the village will affix a stamp to the document if the subject property is found to be in compliance with all village codes in force at the time the document is submitted. The ordinance further provides that the requirement be reflected on all real estate title insurance reports conducted precedent to the transfer of ownership, to give public notice of the mandatory inspection. In April, 1994, the village of River Grove adopted a similar ordinance. Both Westchester and River Grove are non-home-rule municipalities.

Non-home-rule municipalities have only those powers which are expressly granted by statute and the constitution, those powers which are incident to those which have been expressly granted and those powers which are indispensable to the accomplishment of the declared objects and purposes of the municipal corporation. (Pesticide Pub. Pol. v. Village of Wauconda (1987), 117 Ill. 2d 107, 111-112.) Consequently, as a threshold issue, it must be determined whether Westchester and River Grove have the power to adopt the ordinances in question. Only if this question is answered affirmatively will it be necessary to

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consider whether the villages' power is preempted by State law relating to title insurers.

Neither village has cited any authority for the adoption of these ordinances. The only purpose suggested within the body of each ordinance, apart from the collection of a \$25 fee, is to determine whether the property is in compliance with village codes (Village of Westchester Ordinance No. 94-1387, adopted February 8, 1994, at p.1) or to determine whether any "outstanding obligation is due to the [v]illage with respect to the property" (Village of River Grove Ordinance No. 1994-05, adopted April 21, 1994, at p.1). Municipalities are authorized, under Article 11 of the Municipal Code (65 ILCS 5/11-1-1 et seq. (West 1992)), to adopt a number of ordinances and codes designed to protect public health and safety, and are authorized to enforce such codes by requiring permits, fees, and fines. (E.g., 65 ILCS 5/11-31.1-1 et seq.; 5/11-37-1 et seq.; 5/11-38-4 (West 1992).) Further, municipalities may impose various fees for other services relating to real property. In no instance, however, are municipalities authorized to limit the alienability of property in order to enforce such codes.

Although these ordinances do not expressly so state, I assume that the villages will refuse to affix the "document review" stamp to any deed for property which is not in compliance with the village codes (the village of Westchester) or concerning

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which unpaid obligations may be deemed to be due (the village of River Grove). Thus, even if the deeds are returned to the persons submitting them, if they proceed with the transactions they will violate the application ordinance and be subjected to its penalties. This attempt to make alienability subject to municipal regulation clearly exceeds the villages' powers.

Further, non-home-rule municipalities have no authority to impose a tax on the transfer of real property. The authority to impose such a tax is expressly reserved to home rule municipalities (65 ILCS 5/8-11-6a (West 1992)). While the fee imposed by the River Grove and Westchester ordinances is denominated a document inspection fee, rather than a transfer tax, there can be little doubt that it operates as the latter. As previously discussed, the villages' authority to enforce their health and safety codes is entirely unrelated to the transfer of property. Moreover, a document inspection would provide no basis upon which to determine whether the property was in compliance with codes, and the ordinances do not even suggest that the affixing of the required stamp will depend upon an inspection of the property itself. In my opinion, the inspection fee is, in both operation and effect, a prohibited transfer tax.

Because the non-home-rule villages in question have no authority to enact or enforce ordinances restricting the transfer of real property or to impose a fee or tax thereon, it is my

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opinion that the ordinances are void and unenforceable. Because of this conclusion, it is not necessary to determine whether such ordinances, with respect to their effect on title insurers, are preempted or superseded by State laws requiring the licensure of title insurers.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in black ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL