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SPRINGFIELD

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FILE NO. S-1424

STATE MATTERS:
Transfer of Realty from
One State Agency to Another

John D. Kramer, Director
Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Kramer:

I have your letter relating to the application of section 4-509 of the Illinois Highway Code. (Ill. Rev. Stat. 1977, ch. 121, par. 4-509.) You inquire whether the last sentence of section 4-509 is to be given a mandatory construction, requiring that replacement property be deeded by the Department of Transportation to the Illinois Department of Conservation, or whether it is to be given a directory construction. For the reasons hereinafter stated, it is my opinion that the language in question is neither mandatory nor directory, but is merely a grant of authority.

The Department of Transportation is, subject to the approval of the Governor and the consent of the agency

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having custody or control of the property, authorized to take and use such State property as may be deemed necessary for State highway purposes. (Ill. Rev. Stat. 1977, ch. 120, par. 4-504.) Section 4-509 of the Code authorizes the Department to acquire property to replace public property which it has taken for highway purposes. The last sentence of section 4-509 provides as follows:

" * * * The Department is authorized to convey to such public agency such easements, rights, lands or other property it so purchases or acquires for such replacement by deed executed by the Director of the Department."

The above language is a grant of authority to deed property for replacement purposes to a public agency from which land used for highway purposes has been acquired. The authority would be used if the public agency to which the land is to be transferred is not an agency of State government. The language does not mandate or direct the transfer of replacement property by deed.

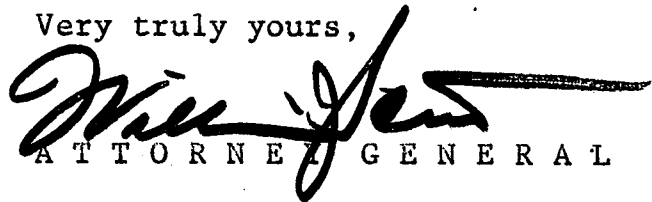
In the situation which you have presented, the Department of Transportation wishes to acquire property from the Department of Conservation for highway purposes and to acquire replacement property to be transferred to the Department of Conservation. The property of State agencies is the property of the State of Illinois. (See People ex rel. Board of Trustees v. Barrett (1943), 382 Ill. 321; 1954 Ill. Att'y Gen. Op. 47.) Generally, a transfer of jurisdiction

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approved in writing by the Governor, is all that is necessary to transfer control of realty from one State department to another. (See Ill. Rev. Stat. 1977, ch. 127, pars. 39b23, 40.20, 43.19, 45, 49.12, 55.24, 55a, 56, 58.32, 63a10, 63b13.7.) Therefore, it would be neither necessary nor proper for the Department of Transportation to deed the property to the Department of Conservation.

The Department of Transportation has authority, subject to the written approval of the Governor, to transfer jurisdiction over any realty under its control to any other department of the State government. (Ill. Rev. Stat. 1977, ch. 127, par. 49.12.) Once it acquires replacement property under section 4-509 for another State agency, the Department may transfer jurisdiction to the agency without using the authority to deed property granted by section 4-509.

Very truly yours,


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