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July 26, 1991

FILE NO. 91-027

ZONING:
Applicability of County
Zoning Ordinance to Construction
by Library District

Honorable George H. Ryan
Secretary of State
State Capitol, Room 213
Springfield, Illinois 62706

Dear Mr. Ryan:

I have your letter wherein you inquire whether a public library district may construct a library building on property it owns within its territorial limits without regard to county zoning regulations. For the reasons hereinafter stated, it is my opinion that the district may elect to locate its library without compliance with county zoning ordinance classifications, so long as it exercises the power to locate the building in a manner that is not arbitrary or unreasonable.

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The board of trustees of each public library district constitutes a body politic and corporate with the power to enact ordinances and to hold title to property. (Ill. Rev. Stat. 1989, ch. 81, par. 1001-5.) The general purpose of a public library district is to establish, equip, maintain and support libraries for the use of the residents and taxpayers of the district in order to provide local public institutions of general education. (Ill. Rev. Stat. 1989, ch. 81, par. 1001-3, par. 1004-11.) The powers conferred on the board of trustees by section 4-11 of the Illinois Public Library District Act (Ill. Rev. Stat. 1989, ch. 81, par. 1004-11) include the power to exercise exclusive control over the expenditure of all monies deposited to the credit of the library fund, to purchase or lease real property, to construct appropriate buildings for the use of the library or libraries established by the district, to take title to any property acquired by it for library purposes and to exercise the power of eminent domain.

With respect to territory not governed by municipal zoning ordinances, the county board has the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by the board, to divide such territory into districts of different classes according to the use of land and buildings, and to prohibit uses, buildings or structures incompatible with the character of such districts. (Ill. Rev. Stat.

1989, ch. 34, par. 5-12001.) The county zoning ordinance may include "appropriate regulations" to be enforced within the various districts (Ill. Rev. Stat. 1989, ch. 34, par. 5-12007) and may require that applications be made for permits to erect buildings or structures for any class or classes of districts created by the zoning ordinance (Ill. Rev. Stat. 1989, ch. 34, par. 5-12008). There is, however, no statutory provision which either explicitly subjects a library district's choice of location of a library to the zoning authority of the county board, or exempts the library board of trustees from compliance with county zoning ordinances.

Although the resulting authority is, at best, inconsistent, the courts and the Attorneys General have previously addressed similar issues to that which you have raised. For example, in Decatur Park District v. Becker (1938), 368 Ill. 442, the supreme court considered a landowner's challenge to a park district's petition to condemn his land for park purposes. The court stated therein that:

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> It is next insisted that the zoning ordinance of the city of Decatur prohibits petitioner from taking these tracts for park purposes, because they were zoned as 'A' residence property, and public parks could not be located there. No authority is cited to support this contention, and on principle it cannot be sustained. If appellants' contention is correct, it would be necessary for the appellee to locate its city parks and playgrounds in commercial and industrial zones exclusively. The appellee is

> given authority to adopt a zoning ordinance. The legislature did not empower cities to exclude parks from residence districts. 'The two statutes should be construed so that the ordinance of the park district and the zoning ordinance of the city will be given effect in their respective fields of operation.' Regardless of the fact that this property was zoned as 'A' residence property, the park district could condemn and use it for park purposes.
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> * * * "

Subsequently, however, in Heft v. Zoning Board of Appeals of Peoria County (1964), 31 Ill. 2d 262, the court appeared to modify its broad holding in Decatur Park District v. Becker. In that case, certain landowners objected to the granting of a variance by the county zoning board of appeals to a sanitary district for the purpose of constructing a sewage disposal plant. After upholding the decision to grant the variance, the court considered the sanitary district's contention that it need not comply with county zoning regulations, stating:

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> We come now to the contention of the Sanitary District that the statute under which it is organized authorized it to establish a needed disposal system and that no other governmental unit can interfere with the exercise of that authority so that it need not comply with zoning regulations. We have never so held. This would result in an impossible as well as an undesirable situation. As we said in Decatur Park District v. Becker, 368 Ill. 442, in discussing a similar contention with reference to establishment of a park in a residentially zoned area: 'The two statutes should be construed so that the ordinance of the park district and the zoning fields

> of operation' will be given effect in their respective fields of operation.' While we there held that the park district might condemn the area for park purposes, the city zoning ordinance's effectiveness was recognized. We are of the opinion that the Sanitary District was required to comply with the provisions of the zoning ordinance and follow its procedures in varying the use of the property from its zoned classification. This the district did. It ought not be permitted to contend that its action never was necessary in justifying the use of the area it now seeks. The zoning statutes applied even to the Sanitary District's proposed use.
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> * * * "
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> Heft v. Zoning Board of Appeals of Peoria County (1964), 31 Ill. 2d 262, 271.

Then, in City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago (1971), 48 Ill. 2d 11, 14-15, the court declared that the first three sentences of the immediately preceding quotation were merely gratuitous. In this case, the sanitary district had condemned property within the jurisdiction of the municipality pursuant to a statutory grant of authority and had constructed a water reclamation plant thereon without application to the city for a variance. The court held that the exercise of the district's condemnation powers within the statutory grant was not subject to the city's zoning restrictions, concluding that to hold otherwise would relegate the authority of the district to that of a private landowner and thereby frustrate the purpose of the statute. (City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago (1971), 48 Ill. 2d 11, 14.) Further, it has

been held that the principle enunciated therein applies whether the property is acquired voluntarily or by eminent domain. People ex rel. Scott v. North Shore Sanitary District (1971), 132 Ill. App. 2d 854, 858; (sanitary district's sewage facilities not subject to city zoning regulations); Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184, 187 (county dog pound).

While holding that a county need not submit to a village zoning ordinance in the construction of a dog pound, the court in Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184, also held that the county could not proceed in total disregard of the village's building, sewer, electrical and plumbing ordinances. The court noted that these ordinances were designed to protect public health and safety and were not, by their very nature, capable of thwarting the proposed building project; the county was required to comply with such ordinances unless compliance interfered with the county's statutory function of controlling stray animals, and the county could not abuse its power by acting arbitrarily or unreasonably. Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184, 188.

In opinion No. S-1023, issued December 30, 1975 (1975 Ill. Att'y Gen. Op. 347), Attorney General Scott advised that a county could locate a juvenile detention facility within a

municipality without compliance with municipal zoning classifications, as long as the determination to locate the facility therein was not arbitrary or unreasonable. Following a review of pertinent decisions from Illinois and other jurisdictions, he concluded that the weight of authority favored the position that units of local government, in exercising a governmental function, are not subject to local zoning ordinances unless the contemplated function would involve arbitrary or unreasonable action. (1975 Ill. Att'y Gen. Op. 347, 349; see also 1979 Ill. Att'y Gen. Op. 40, 41 (a county zoning ordinance is not applicable to uses made of forest preserve district property, but a county building code would apply unless compliance therewith would interfere with the district's statutory mandate); 1982 Ill. Att'y Gen. Op. 114, 117-18 (a county may enforce its floodplain ordinance, adopted under zoning power, within a drainage district unless there is an irreconcilable conflict between the ordinance and the district's statutory powers and duties).)

The authorities cited above strongly support a conclusion that the library district in question may construct its library without compliance with the county zoning ordinance. In its most recent discussion of this issue, in Wilmette Park District v. Village of Wilmette (1986), 112 Ill. 2d 6, however, the supreme court rejected the argument that a park district is completely exempt from compliance with the zoning ordinances of

its host municipality in exercising its statutory authority over the operation of its parks. Absent an explicit grant of immunity, reasoned the court, the mere fact that the park district has a statutory duty to operate its parks cannot be extended to support the inference that it can exercise its authority without regard to the zoning ordinances of its host municipality. (Wilmette Park District v. Village of Wilmette (1986), 112 Ill. 2d 6, 14-15.) In particular, where the significant expansion of a park--which included the addition of more territory and the material expansion of lighting and lighted, nighttime activities at the park--constituted a special use for purposes of a zoning ordinance, the court determined that the park district could be required to appear at a special use hearing. Judicial review of the village's actions would be available if the village were to administer its zoning ordinance in an unreasonable, arbitrary or discriminatory manner in denying the park district a special use permit or otherwise abuse its zoning power to thwart or frustrate the park district's statutory duties. Wilmette Park District v. Village of Wilmette (1986), 112 Ill. 2d 6, 17-19.

It has been suggested that Wilmette Park District may represent a landmark turning point in intergovernmental relations between units of local government. (Scheurich, Jurisdictional Conflicts Between Municipalities and Special Districts, 75 Ill. B.J. 214 (1986).) In reliance upon Wilmette

Park District, it has recently been held that a highway commissioner could be required to apply for and obtain a site-development permit pursuant to a county zoning ordinance requiring that such a permit be obtained for excavation, earth moving or plant removal projects of certain sizes. County of Lake v. Semmerling (1990), 195 Ill. App. 3d 93 (certiorari denied).

I do not believe, however, that Wilmette Park District v. Village of Wilmette mandates a conclusion that the library district's choice of library location must conform to the provisions of the county zoning ordinance. The court indicated that its decision did not implicitly reverse any of several earlier cases, including City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago (1971), 48 Ill. 2d 11, Decatur Park District v. Becker (1938), 368 Ill. 442, or Village of Swansea v. County of St. Clair (1977), 45 Ill. App. 3d 184. The court noted that none of those cases involved the narrow issue presented to it in Wilmette Park District v. Village of Wilmette, where the zoning ordinance of the host municipality did not prohibit the park district's use of the land in question but only required that the use be the subject of a special use permit. Wilmette Park District v. Village of Wilmette (1986), 112 Ill. 2d 6, 15.

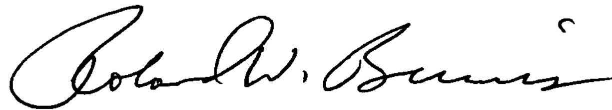
Indeed, it was not the location, but the operation of the park that was to be the subject of the special use hearing

in the Wilmette Park District case. The court recognized that the new lights and nighttime, open-air sports programming proposed for the park could have an impact on the surrounding residents' enjoyment of their property, and that the municipality had a legitimate interest in minimizing abrasive activities and promoting uses consistent with the character of the community and the expectations of its residency. The park district, of course, had an interest in operating and maintaining its parks. The court indicated that requiring the park district to participate in the hearing would not thwart or frustrate the park district in exercising its statutory obligations (Wilmette Park District v. Village of Wilmette (1986), 112 Ill. 2d 6, 14), and was the best possible way to achieve cooperation between independent units of local government having competing interests. Nothing in the opinion, however, suggests that the municipality could have prevented the park district from locating its park where it chose to, or from conducting thereon ordinary park functions.

In your letter you have asked whether the library district may construct a library building "without regard" to the county zoning ordinance. Without further information regarding the specific nature of the zoning regulations which are claimed to be applicable to the library, it is impossible to determine whether the library district must comply therewith. It is my opinion, however, based upon Decatur Park District v. Becker and subsequent supreme court decisions, that

the library district is not subject to the provisions of the zoning ordinance in determining where to construct its library, as long as that determination is not arbitrary or unreasonable. Dependent upon their nature, zoning regulations relating to the operation of the facility, in contrast to those relating solely to permissible uses, may be applicable to the library district unless compliance therewith would frustrate the fundamental purposes of the district.

Respectfully yours,



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