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FILE NO. S-1224

COUNTIES:

Requirements Relating to
Bonds Posted by Subdivision
Developers

Honorable Thomas J. Difanis
State's Attorney
Champaign County
Court House
Urbana, Illinois 61801

Dear Mr. Difanis:

I have your letter wherein you inquire whether a county may allow a subdivision developer to post an individual bond along with a cash deposit in lieu of obtaining a corporate surety bond. You also ask whether a county may return portions of deposits to developers as they complete their work. For the reasons hereinafter stated, it is my opinion that an

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individual bond with a cash deposit can be accepted in lieu of a corporate surety bond only if such deposit is equal to the amount of bond required by statute. It is also my opinion that portions of the cash deposit may not be returned as the developer's work is completed but the entire deposit must be retained until completion of the project.

Section 25.09 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 414) provides in pertinent part as follows:

"* * * Each person who seeks the county board's approval of a map, plat or subdivision shall post a good and sufficient bond with the county clerk, in a penal sum sufficient to cover the estimate of expenditures made by the estimating engineer. The bond shall be conditioned upon faithful adherence to the rules and regulations of the county board promulgated pursuant to the authorization granted to it by this Section.
* * *"

The term "bond" as that term is used in the foregoing section has been defined as follows:

"* * * An instrument with a clause, with a sum fixed as a penalty, binding the parties to pay the same, conditioned, however, that the payment of the penalty may be avoided by the performance by some one or more of the parties of certain acts. * * *" Black's Law Dictionary 224 (Rev. 4th ed. 1968)

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There is no requirement in the general definition or in section 25.09 that such a bond be obtained through a corporate surety, and, therefore, an individual bond would be permissible. A cash deposit, however, must accompany the individual bond and must be in a sum equal to the amount of bond required by section 25.09, i.e., it must be in a penal sum sufficient to cover the estimate of expenses made by an estimating engineer. Section 25.09 requires the posting of "good and sufficient bond". The posting of an individual bond without a cash deposit in the amount indicated would not provide the protection contemplated by the legislature when it enacted the section.

The bond required is conditioned on faithful adherence to the rules and regulations of the county board promulgated pursuant to the authorization granted to the board by section 25.09. A non-home rule county has only those powers expressly delegated by the legislature or necessarily implied therefrom. (Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Therefore, authorization to return portions of a deposit must be found in or implied from pertinent statutory provisions. (See, Ill. Att'y. Gen. Op. NP-1211, issued

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Feb. 18, 1977.) Nothing in section 25.09 or in any other statutory provision authorizes return of portions of a bond deposit as work is completed, and, therefore, it appears that the entire sum must be retained until it can be ascertained that the county board's rules and regulations have been adhered to by the developer.

Very truly yours,

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