



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-601

HEALTH:
Public Health Districts

CONSTITUTION:
Units of Local Government

Dr. Joyce Lashof
Acting Director
Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62706

Dear Director Lashof:

I have your predecessor's letter wherein it was stated
in part:

"I respectfully request your opinion in regard
to the following:

- (1) Are public health districts 'units of local government' within the meaning of Article VII of Section 1 of the Constitution of 1970?
- (2) Do public health districts have the authority to contract with or otherwise associate themselves

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with a group of local jurisdictions, a city or county, or another public health district or districts and/or the Department of Personnel pursuant to Chapter 127, Paragraph 63b119 and/or the Department of Public Health pursuant to Chapter 127, Paragraph 55.12, for the purpose of the establishment and maintenance of merit systems for their employees?"

Section 1 of article VII of the Illinois Constitution of 1970 reads in part as follows:

" * * * 'units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."

Section 8 of article VII of the Illinois Constitution of 1970 reads in part:

"Townships, school districts special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by laws. * * * "

At the outset it must be noted that by reason of punctuation differences, the definition of "unit of local government" in section 8 of article VII is literally at variance with section 1 quoted above. In section 8 the clause "designated by law as units of local government" appears to modify

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"school districts special districts and units". Thus, consideration must first be given to the question whether a "special district" is dependent upon legislative designation before it enjoys the status of a unit of local government. A review of the Debates of the Constitutional Convention, the Committee Reports, and the application of basic principles of constitutional interpretation clearly point to section 1 as the applicable and definitive statement of what constitutes a "unit of local government". It appears equally clear that the variance in section 8 is explainable by an inadvertent omission of commas following the words "school districts" and the words "special districts".

A contrary interpretation would require the approximately 2400 special districts of Illinois government existing at the time of the Constitutional Convention and comprising approximately 27% of all Illinois governments, to be specifically designated by statutes enacted by the General Assembly in order to be "units of local government". The intent of the Convention was to afford them a constitutional status. Such special districts were definitely recognized as important limited governments and no question was raised as to their status as

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such but only as to the method by which their personnel would be selected. (Sixth Illinois Constitutional Convention, Verbatim Transcripts, Vol. IV, p. 3440.) Furthermore, to adopt an interpretation under section 8 that special districts qualify as units of local government only by specific designation of the General Assembly would necessitate a similar conclusion with respect to "school districts". Yet section 1 expressly excludes school districts from any possible designation as "units of local government". Absent these interpretive considerations, section 1 would clearly control since its only and exclusive purpose is to define the terms "municipalities" and "units of local government" for all purposes in subsequent sections of article VII. Thus, variance in punctuation or language found in subsequent sections must yield to the definitive treatment found in section 1.

It is obvious from reading section 1 of article VII of the Illinois Constitution of 1970; if public health districts are to be considered as "units of local government", they must be either special districts or designated by law as a unit of local government. As the latter is not the case, the question then arises as to whether a public health district

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is a "special district".

It is a general rule of constitutional construction that words used in a constitution are not given technical meanings unless by the nature of the subject matter or by the context by which they are used indicates that they were used in a technical sense. (16 C.J.S. Const. Law, sec. 20.) The language and words of a constitution, unless they are technical words and phrases, will be given effect according to their usual and ordinary signification. (People v. Stevenson, 281 Ill. 17, 26.) However, considering the purpose of section 1, supra, and in light of the intent of the constitutional convention as revealed in its debates, the words "special district" as used in section 1 of article VII of the Illinois Constitution of 1970, require that a technical meaning be ascribed to them.

Special districts are organized entities, possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property. They have officers who are popularly elected or chosen by other public officials. They have considerable fiscal and administrative independence from other governments. Special

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District Governments in the United States, John C. Bollens,
University of California Press, 1961.

A special district is a body corporate. (The Structure of Local Government in Illinois, Public Administration Services, Staff Paper No. 1, February 1969.) They are an independent, autonomous unit of government which usually have their own powers of taxation. (Commission on Local Government, Report to Governor Richard B. Ogilvie and Members of the 76th Illinois General Assembly, March 1969.) They are independent of review by any other unit of local government in the security, budgeting and administration of their revenues. Structure of Local Government in Illinois, Special District, League of Women Voters of Illinois.

Public health districts are bodies corporate. (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 13.) They are organized entities possessing a distinct structural form consisting of a board of health who elect from their own number a chairman, a secretary and/or a treasurer. (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 13.) They possess an official name selected by each board of health at its first meeting. (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 13.) They possess the authority to

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acquire, hold, lease and sell, in the name of the public health district real estate and personal property. Ill. Rev. Stat. 1971, ch. 111 1/2, par. 15.

Public health districts have fiscal autonomy in that they have the authority to levy an annual tax (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20.1), and to issue bonds. (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20.3.) However, the power to issue bonds and levy taxes are both dependent upon the results of an election within the boundaries of the district. Thus, they are independent in the administration of their revenues from any other unit of local government.

A public health district was considered to be a special district by the members of the Local Government Committee to the 6th Illinois Constitutional Convention as their committee proposal contains an appendix which lists units of local government. Appearing under the category of special districts are public health districts. Sixth Illinois Constitutional Convention, Committee Proposals, Vol. 7, page 1849.

Therefore, it is my opinion that a public health district is a special district within the meaning of section 1

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of article VII of the Illinois Constitution of 1970 and thus a unit of local government.

In your second question, you have inquired into the contracting authority of a public health district. Section 10(a) of article VII of the Illinois Constitution of 1970 provides in pertinent part:

"Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance. * * * "

Therefore, in answer to your second question, I am of the opinion that public health districts have the authority to contract or otherwise associate themselves with a city or county or another public health district or districts to carry out any function not prohibited by law or by ordinance.

You have further inquired in your second question whether public health districts can contract with the Department of Personnel or the Department of Public Health in connection with the establishment and maintenance of merit systems for their employees.

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The Director of the Department of Personnel may enter into agreements with any city, village, incorporated town, county or other political subdivision in this State for purposes of assisting in the administration of a personnel program on merit principles. Ill. Rev. Stat. 1971, ch. 127, par. 63b119.

In Commissioner of Internal Revenue v. Shamberq's Estate, 144 F. 2d, 998 (C.C.A. 2) cert. den., 323 U.S. 792, 65 S. Ct. 443, 89 L. Ed. 631, the court therein defined the term "political subdivision" to mean a broad and comprehensive division of the State, made by the proper authorities thereof acting within their constitutional powers for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessity of government have always been regarded as public.

Attributes generally regarded as distinctive of political subdivisions are that they exist for the purpose of discharging some function of local government, have a prescribed area, and possess authority for subordinate self-government through officers selected by it. 32A Words and Phrases, Political Subdivisions 51, citing Dugas v. Beauregard, 236 A. 2d 87, 89, 155 Conn. 573.

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The court in People ex rel. Nourie v. Peltier, 265 Ill.

630 at 632-3, stated:

"Whether a high school district is a municipal corporation or quasi municipal corporation or not, it is a political division of the State, because the territory comprising it is organized for the public advantage and the exercise of governmental functions by the support of free schools and levying taxes for such support. (31 Cyc. 908.) It does not become such political division, however, until it has been organized and is capable of exercising such functions."

As public health districts are special districts existing for the purpose of discharging a function of local government i.e., preservation of the public health, which is a function for the public advantage, and since they possess authority for self-government through their officers I am of the opinion that a public health district is a political subdivision of the State. Therefore, the Department of Personnel pursuant to the above statutory provision has the authority to contract with a public health district for the purpose of providing assistance in the administration of a personnel program on merit principles.

You have also inquired as to whether or not a public health district is authorized to contract with the Department

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of Public Health in connection with the establishment and maintenance of a merit personnel system.

I note that the contractual authority of the Department of Public Health is clearly and concisely stated in the following statutory provision:

"To enter into contracts with the Federal Government, other States, local governmental units and other public or private agencies or organizations for the purchase, sale or exchange of health services and products which may benefit the health of the people. * * * "

Ill. Rev. Stat. 1971,
ch. 127, par. 55.12.

It is a rule of statutory construction that an unambiguous statute must be held to mean what it plainly expresses and its plain and obvious meaning may not be enlarged or restricted. (People ex rel. Chadwick v. Sergel, 269 Ill. 619.) The contractual power of the Department of Public Health is limited to contracts for the purchase, sale or exchange of health services and products which may benefit the health of the people. The statutory provision conferring the contractual authority of the Department of Public Health is clear and unambiguous. The terms or words used in that statutory provision may not be unduly enlarged. Any construction

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of the words "health services" which would include within their meaning the establishment of a personnel system would in effect constitute an undue enlargement of the meaning of those words.

Therefore, it is my opinion that the Department of Public Health does not have the authority to enter into contracts with public health districts for the establishment and maintenance of a merit personnel system.

In summary, it is my opinion that a public health district is a special district within the meaning of section 1 of article VII of the Illinois Constitution of 1970.

This conclusion is premised upon the fact that there are only four public health districts within the State who have received through the referendum provisions of section 21 of "AN ACT to authorize the organization of public health districts * * * ", (Ill. Rev. Stat. 1971, ch. 111 1/2, par. 20.1) the authority to levy an annual tax. It would further appear that any public health district not possessing the authority to levy an annual tax would not be a special district within the meaning of section 1 of article VII of the Illinois Constitution of 1970.

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Further, it is my opinion that public health districts have the authority to contract with a city or county or another public health district to carry out any function not prohibited by law or ordinance; that public health districts may contract with the Department of Personnel for the purpose of obtaining assistance in the administration of a personnel program on merit principles.

Finally, the Department of Public Health does not have the authority to contract for the establishment and maintenance of a merit personnel system.

Very truly yours,

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