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62706

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FILE NO. S-996

**ROADS AND BRIDGES:**

**Sale of Land no Longer Needed  
For Highway Purposes**

Langhorne Bond, Secretary  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, Illinois 62764

Dear Mr. Bond:

I have your letter wherein you state:

"Funds were provided under House Bill 1757 of the 72nd General Assembly for the purchase of sites for the construction of maintenance storage facilities. A site on Ridgeland Avenue south of Illinois Route 83 in Worth Township was one of the sites selected and purchased in fee in 1962 with these funds. After purchase, the real estate was inventoried under the State Property Act, (Chapter 127, Section 133(b)1 through 133(b)12).

The site was not utilized for the purpose for which it was purchased and as it is no longer

needed it has been determined to dispose of it so as to return it to the tax rolls. The land is vacant and has substantially increased in value since its purchase. In determining our procedure toward disposing of the subject property, it is necessary that your opinion be obtained on the following questions:

1. May a parcel of real estate acquired pursuant to such an appropriation, and inventoried under the State Property Act be sold under Section 4-508 of the Highway Code? It is noted that Section 4-508 covers only land acquired for highway purposes or remnants of land so acquired under the provision of Section 4-501. Such purchases under Section 4-501 of the Highway Code would seem to be exempt from inventory under Section 133(b)3 of the State Property Act.
2. If your answer to Question 1 is in the affirmative, would section 4-508(c) be applicable as the land is vacant but the owner from whom the land was acquired still resides in a dwelling on the remainder of the property?
3. If your answer to Question 1 is in the negative, is there any other existing statutory authority to dispose of the property?"

The Department of Transportation is a State agency which has only those powers conferred upon it by the legislature. (Dept. of Public Works & Bldgs. v. Ryan, 357 Ill. 150.) The power to authorize the sale of State owned real estate belongs to the General Assembly; in the absence of any

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statutory authority, a State agency lacks the power to sell State property. (1919-20 Ill. Att'y. Gen. Op. 406.) Your first question requires a determination of whether section 4-508 of the Illinois Highway Code (Ill. Rev. Stat. 1973, ch. 121, par. 4-508) gives the Department of Transportation the power to sell land originally acquired by the department for the construction of a maintenance storage facility.

Subsections (a) and (c) of section 4-508 deal with the sale of land by the department. Both subsections provide that the department may sell land originally acquired for highway purposes. The decisive issue in your first question is whether land purchased for the construction of a maintenance storage facility was acquired for highway purposes. Subsections (a) and (c) read as follows:

"§4-508. (a) Except as provided in paragraph (c) of this Section, and subject to the written approval of the Governor, the Department may dispose of, by public sale, at auction or by sealed bids, any land, rights or other properties, real or personal, acquired for but no longer needed for highway purposes or remnants acquired under the provisions of Section 4-501, provided that no such sale may be made for less than the fair appraised value of such land, rights, or property.

\* \* \*

(c) If at the time any residential property previously determined by the Department to be needed for highway purposes is declared no longer needed for such purposes, and the person from whom such property was acquired resides in a dwelling on such property and has resided there since the acquisition by the Department, the Department before making any disposition of that property shall first offer in writing that property to the party residing thereon at the then fair appraised value of the property. If the offer is not accepted in writing within 60 days of the date of the written offer, all rights under this paragraph shall terminate. (emphasis added.)

Article IV of the Illinois Highway Code is separated into five divisions. Section 4-508 is part of Division 5 (Ill. Rev. Stat. 1973, ch. 121, pars. 4-501 to 4-511) which is titled "Property Acquisition and Disposal". The sections that compose Division 5 establish a scheme by which the Department of Transportation is given the power to acquire and dispose of property. Section 4-501 of the Illinois Highway Code (Ill. Rev. Stat. 1973, ch. 121, par. 4-501) describes the purposes for which the department may acquire land. Section 4-501 provides in pertinent part as follows:

"The Department, in its name, or any county may acquire the fee simple title, or such lesser interest as may be desired, to any land, rights, or other property necessary for the construction, maintenance or operation of State highways, or necessary for locating, relocating, extending, widening or straightening any State highway, or necessary for locating, relocating, extending, widening or straightening an existing street or for laying out, establishing or opening a new street within the corporate limits of any municipality which has been designated by the Department as a street to form a part of or to connect with a State highway leading up to the corporate limits of such municipality, or necessary for any other purpose or use contemplated by this Code by purchase or by the exercise of the right of eminent domain under the eminent domain laws of this State and the Department shall not be required, in any case, to furnish bond. \* \* \*" (emphasis added.)

In construing a section of a legislative act, the section must be read in relation to the whole act so that the section is consistent with the general plan or object of the act. (People ex rel. Roan v. Wilson, 405 Ill. 122.) The term "highway purpose" in section 4-508 must be read in relation to the general plan of the Illinois Highway Code. The intent of Division 5 of article IV is to create a plan for acquiring and disposing of property by the Department of Transportation. The logic of this plan would be disrupted if the term "highway purpose" was to be limited to only part of the land the department is authorized to acquire under

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section 4-501. There is no indication that the legislature intended such a limitation. The correspondence between the department's power to acquire and its power to dispose of property requires that when any land the department was authorized to acquire under section 4-501 is no longer needed by the department, the department may dispose of the land under the provisions of section 4-508. Therefore, "highway purpose" in section 4-508 refers to all land the department is authorized to acquire under section 4-501.

Section 4-501 authorizes the department to acquire land for the construction of maintenance storage facilities since these facilities are necessary for the maintenance of State highways. The word "necessary" in section 4-501 means "reasonably convenient or useful" and is not limited to absolute necessity. (Dept. of Public Works & Bldgs. v. Lewis, 411 Ill. 242.) Storage facilities are useful in maintaining State highways. I have been advised that maintenance storage facilities are used for storing trucks involved in maintenance projects on nearby highways, snow removal equipment, and materials, such as sand and salt, which are necessary for keeping the nearby

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highways in good condition. The Department of Transportation is charged with maintaining the State highway system. (Ill. Rev. Stat. 1973, ch. 121, par. 4-201.6.) In order to accomplish this task the department is authorized to obtain maintenance equipment. (Ill. Rev. Stat. 1973, ch. 121, par. 4-201.7.) It is obvious that the maintenance equipment obtained by the department needs to be stored in order to be available for efficient utilization. Facilities to store maintenance equipment, thus, make a useful contribution to the effectiveness of the department's maintenance projects. Therefore, the authorization in section 4-501 that the department may acquire land necessary for the maintenance of State highways enables the department to purchase land for the construction of maintenance storage facilities.

Section 4-508 authorizes the department to dispose of land it was authorized to acquire under section 4-501. The parcel described in your letter was purchased for the construction of a maintenance storage facility. Section 4-501 authorizes the department to acquire land for the construction of maintenance storage facilities. Therefore, the answer to your first question is that the parcel described in your letter may be disposed of under the provisions of section 4-508.

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There is no authority under the State Property Control Act (Ill. Rev. Stat. 1973, ch. 127, pars. 133b1 et seq.) to sell the parcel in question. Section 133b10 of the Act (Ill. Rev. Stat. 1973, ch. 127, par. 133b10) does authorize the sale of "transferable property" whenever necessary. However, "transferable property" is defined in section 133b4.1 of the Act (Ill. Rev. Stat. 1973, ch. 121, par. 133b4.1) as all tangible personal property belonging to the State of Illinois. Thus, the authorization of section 133b10 does not apply to real estate.

You note in your letter that the parcel in question had been inventoried under the provisions of the State Property Control Act. Inventory of the parcel is required by the Act. Section 133b9.4 (Ill. Rev. Stat. 1973, ch. 127, par. 133b9.4) requires that "all items of property" be inventoried. "Property" includes "all real estate, with the exception of rights of way for State highway improvements, traffic signs and traffic signals, and with the exception of common school property". (Ill. Rev. Stat. 1973, ch. 127, par. 133b3.) The parcel in question was not intended to be used as a right of way and, thus, was required to be inventoried.



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In your second question, you ask whether the procedure for disposing of department land in subsection (c) of section 4-508 can be used to dispose of the parcel in question. According to your letter and supplemental information I have been provided with, it is my understanding that the parcel is approximately 5 1/2 acres. When the department purchased the land in 1962, it was used for agricultural purposes; there was a barn on the land at the time of purchase, but there was no dwelling. The person from whom the department purchased the land also owned an adjacent 5 1/2 acres. The owner dwelt on this parcel in 1962 and has continued to reside in his home there until the present time.

Subsection (a) of section 4-508 authorizes the department to dispose of land no longer needed for highway purposes by public sale, at auction or by sealed bids. Subsection (c) creates an exception to subsection (a) by requiring the department to offer residential property at its appraised value to the person from whom the property was acquired when that person "resides in a dwelling on such property and has resided

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there since the acquisition by the Department". Subsection (c) gives the original owner a sure opportunity to purchase the property so that he may continue to reside in his home.

The sale procedure in subsection (c) applies when the department acquires residential property and the owner of the land acquired has a dwelling on the land. Based on my understanding of the facts in this case, the parcel of land described in your letter does not meet the requirements of subsection (c). At the time the department acquired the parcel, it was not used for residential purposes. There was no dwelling on the land in 1962, and there is no dwelling on the land now. It is, therefore, my opinion that the land may not be disposed of under the provisions of subsection 4-508(c).

The land may be disposed of according to the provisions of subsection 4-508(a). As stated previously, this subsection requires that the land be disposed of by public sale, at auction or by sealed bids. It should be noted that subsection (a) prevents the department from selling the land "for less than the fair appraisal value".

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Since I have answered your first question in the affirmative, it is not necessary to answer your third question.

Very truly yours,

A T T O R N E Y   G E N E R A L