



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD



February 14, 1991

FILE NO. 91-006

COUNTIES:

Use of General Corporate
Fund to Purchase
Open Space Lands

Honorable Michael J. Waller
State's Attorney, Lake County
18 North County
Waukegan, Illinois 60085

Dear Mr. Waller:

I have your predecessor's letter wherein he inquired whether a county may finance the purchase of open space lands through use of its general corporate fund. For the reasons hereinafter stated, it is my opinion that general corporate fund monies may be used to purchase open space lands.

As noted in Mr. Foreman's letter and enclosed memorandum, it is clear that a county does have the power to purchase and hold real estate for open space purposes. The power to do

so is implied in section 5-1005 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005), as well as other statutes which deal more particularly with land use. Section 5-1005 expressly grants the county board the power to purchase and hold real estate which is necessary for the uses of the county; for the preservation of forests, prairies and other natural areas; for preservation of historical spots in the county; and for park and recreational purposes. Further, the county is authorized to acquire parks, playgrounds, areas enclosing flood plains, floodwater runoff channels, detention ponds and other public grounds, and may regulate their use for any proper public purpose. (Ill. Rev. Stat. 1989, ch. 34, par. 5-1049.) The county can acquire land for the purpose of protecting the water supply (Ill. Rev. Stat. 1989, ch. 34, par. 5-15009), which areas might reasonably be open space lands. The county's authority to protect landmarks and establish preservation districts includes the protection of landscapes and areas of scenic significance. (Ill. Rev. Stat. 1989, ch. 34, par. 5-30004.) All of these purposes may include, from time to time, the acquisition of open space lands by a county. Moreover, the Open Space Lands Acquisition and Development Act (Ill. Rev. Stat. 1989, ch. 85, par. 2101 et seq.) authorizes the Illinois Department of Conservation to assist local governments, including counties, in the acquisition of open space lands.

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Neither the Counties Code nor the Open Space Lands Acquisition and Development Act regulates the method for financing the purchase of open space lands by a county. Section 3 of the latter Act (Ill. Rev. Stat. 1989, ch. 85, par. 2103), however, provides that grants made by the Department of Conservation must be on a 50/50 matching basis. Thus, it follows by necessary implication that the General Assembly intended that local governments, including counties, spend funds from other than State sources for the acquisition and development of open space lands. Since no specific financing mechanism is provided, the source of the money to be used is not limited to a particular fund.

Clearly, the purchase of open space lands by the county is authorized by statute, and the use of county funds for such a purchase would be for a valid corporate purpose. In the absence of a statute otherwise providing, it is therefore my opinion that the county general corporate fund may properly be used as a source for funding the acquisition of open space lands.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL