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Mr. Michael McCreery
United Counties Council of Illinois
217 East Monroe Street, Suite 101
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Re: Demolishing Abandoned Homes

Dear Mike:

Question:

Can a County enter into an intergovernmental agreement with a municipality for the purposes of the County demolishing abandoned homes on behalf of the municipality in exchange for the municipality paying the County's costs for doing so?

Analysis:

Units of local government¹, including Counties, may enter into agreements with other units of government to achieve any number of lawful purposes. Authority to contract and otherwise associate with other units of local government can be found in both the Illinois Constitution² as well as the Intergovernmental Cooperation Act³.

The Illinois Courts and the Illinois Attorney General have conflicting interpretations of the Intergovernmental Cooperation Act. Courts have held that the Intergovernmental Cooperation Act "permits two or more public agencies to act jointly in the exercise of any power possessed by one of those agencies."⁴ The Attorney General has generally taken the position that each party to the agreement must possess the power being exercised pursuant to that agreement. Therefore, the public bodies that are parties to an intergovernmental agreement must analyze which public body is

¹ 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.

² Illinois Constitution of 1970, Section 10.

³ 5 ILCS 220/1 *et seq.*

⁴ *Oak Lawn v. Commonwealth Edison Co.*, 163 Ill. App. 3d 457, 460 (1st Dist.1987) (Court held a village, which entered into an agreement with a sanitary district, could require a public utility to pay for relocation of transmission lines. The court noted that the Village was only requiring payment for those lines within the Village and would not lose the right to require such action just because it was acting in concert with a sanitary district.)

undertaking which actions in an agreement and pursuant to what authority. "An activity which is not specifically prohibited by law or ordinance involving a function or power which the 'supplying' unit has the general power to exercise may be the subject of an intergovernmental agreement or contract."⁵

Moreover, the Intergovernmental Cooperation Act specifically provides for agreements between counties and municipalities and the permissible geographic scope of acts performed pursuant to those agreements.

Any county may participate in an intergovernmental agreement under this Act notwithstanding the absence of specific authority under State law to perform the action involved provided that the unit of local government contracting with the county has authority to perform the action. The authority of the county shall be limited to the territorial limits of the local governmental unit with which the county contracts. In the case of an intergovernmental agreement between a county and a municipality, however, the agreement may provide that the county may perform an action within the territorial limits of the municipality, within the contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality, or within both.⁶

Both counties and municipalities are authorized to demolish dangerous, unsafe and abandoned buildings. Therefore, an intergovernmental agreement to achieve this purpose would be permissible. However, such an agreement should be carefully drafted to delineate which unit of local government is responsible for securing the necessary approval, judicial or otherwise, for the demolition.

A county board "may demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of the county, but outside the territory of any municipality."⁷ Additionally, a county board in a county that has a health department "upon a formal request by the city, village, or incorporated town demolish, repair or cause the demolition or repair of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of any city, village, or incorporated town having a population of less than 50,000."⁸

Likewise the Illinois Municipal Code states that "[t]he corporate authorities of each municipality may demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings within the territory of the municipality."⁹ The Illinois Municipal Code reiterates the authority of a county board in county with a county health department to demolish structures within a municipality upon formal request by that municipality.

⁵ 1980 Op. Atty Gen. III. 60

⁶ 5 ILCS 220/9

⁷ 55 ILCS 5/5-1121

⁸ 55 ILCS 5/5-1121

⁹ 65 ILCS 5/11-31-1

Additionally, with respect to tax delinquent properties, "the County Board of the County in which the property is located, in its discretion, may bid, or, in the case of forfeited property, may apply to purchase it, in the name of the County as trustee for all taxing districts having an interest in the property's taxes or special assessments for the nonpayment of which the property is sold."¹⁰ As trustee, the County can take steps necessary to preserve the property or return the property to the tax rolls as a beneficial or usable piece of real estate. This may include demolishing any improvements on the property so that new improvements may be constructed thereon and generate tax revenue for the applicable taxing bodies. Moreover, "[i]f the property sold is improved with an abandoned building or structure or if any municipality or other local governmental body has legal action pending because the property violates local building, housing, or fire ordinances, or because the taxes on the property are delinquent for 2 or more years, the court which ordered the property to be sold may" upon a petition, approve action to correct code violations and/or demolish any improvements on the property.¹¹ However, a county which pursues such action prior to the issuance of a tax deed should be mindful not to commit or to permit waste¹² to be committed upon the property in question.¹³

Conclusion:

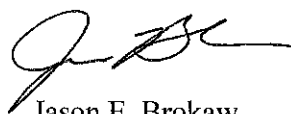
A county may enter into an intergovernmental agreement with a municipality wherein the County demolishes a structure at the cost of a municipality. Before entering into a governmental agreement, the parties thereto should ensure that each party has the authority to undertake the actions ascribed to it as part of that agreement. Both municipalities and counties are authorized to demolish abandoned structures. Therefore an intergovernmental agreement that directs a county to demolish a structure on behalf of a municipality in exchange for payment of the county's costs is permissible, so long as (1) the agreement delineates which party is to secure the authorization for demolition and under what authority it will do so, (2) both parties comply with all other applicable laws, and (3) the units of local government have made the necessary appropriation prior to expending the funds.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Jason E. Brokaw

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

¹⁰ 35 ILCS 200/21-90

¹¹ 35 ILCS 200/21-410

¹² "Waste is defined to be 'a spoil or destruction in houses, lands or tenements, to the damage of him in reversion or remainder.'" *Keogh v. Peck*, 316 Ill. 318, 325 (1925).

¹³ 35 ILCS 200/21-410