

---

# Opinions

*Office of the Attorney General*

---

March 7, 1996

FILE NO. 96 -019

TOWNSHIPS:

Powers of Township Electors at Annual and Special Township Meetings

Honorable James "Pate" Philip  
Senate President  
327 State Capitol  
Springfield, Illinois 62706

Dear Senator Philip:

I have your letter wherein you inquire regarding the extent of the powers which may be exercised by the electors present at the annual township meeting or at a special township meeting convened in accordance with law. For the reasons hereinafter stated, it is my opinion that the electors of a township may exercise only those powers which have been granted to them by statute, or those powers which are necessarily implied therefrom in order to effectuate the expressly granted powers.

As you are aware, the township form of government in Illinois differs significantly from that of other units of local government. The principal distinction is that the township electors are permitted to act directly upon certain legislative matters, notwithstanding the election of a representative body, the board of trustees of the township, which is generally responsible for the day to day governance of the township. The electors may exercise those powers reserved to them at the annual township meeting, or, where appropriate, at a special township meeting. At such meetings, action may be taken upon the affirmative vote of a majority of the electors present and voting (60 ILCS 1/40-15 (West 1994)). In some circumstances, the township board of trustees can act only upon direction from the electors; in other circumstances, the board has independent authority which may be exercised without the concurrence of the electors.

It is my understanding that your question has been prompted by occurrences at recent township meetings in which actions have been taken by the electors which exceeded the powers specified by law. For example, in one instance the electors purported to specify rules and procedures for the conduct of business by the township board, despite the statutory grant of authority to the board to adopt rules to govern its own meetings. (60 ILCS 1/80-10 (West 1994).) In other instances, electors have attempted to appropriate funds or to transfer funds when no funds were available in the township treasury for those purposes.

Section 30-20 of the Township Code (60 ILCS 1/30-20 (West 1994)) provides that the electors present at the annual township meeting may exercise the powers enumerated in article 30 of the Code (60 ILCS 1/30-5 et seq. (West 1994)). The provisions of article 30 address a wide variety of matters pertaining to the governance of the township, including, inter alia, such matters as purchasing property for the use of the township (60 ILCS 1/30-50 (West 1994)), contracting for police protection (60 ILCS 1/30-150, 155 (West 1994)), and promoting the destruction of noxious weeds (60 ILCS 1/30-80 (West 1994)).

Similarly, section 35-5 of the Township Code (60 ILCS 1/35-5 (West 1994)) provides that the electors present at a special town meeting may exercise the powers granted to them under article 35 of the Code. (60 ILCS 1/35-5 et seq. (West 1994)). When a special township meeting is called by the township board, the electors may take any action that may properly be taken at an annual township meeting (60 ILCS 1/35-25 (West 1994)); when called by voters of the township, the electors are limited to taking action upon

matters which have been postponed from consideration at an annual meeting or those which are specified in article 35 of the Code.

It is well established that townships, like all other non-home-rule units of local government, have no inherent powers, but only those which are granted to them by the constitution or by statute. (*Diversified Computer Service v. Town of York* (1982), 104 Ill. App. 3d 852, 857.) Article VII, section 8 of the Illinois Constitution of 1970 provides that townships shall have only the powers granted to them by law. Clearly, the extent of the powers which may be exercised by township electors, and the apportionment of powers between the electors and the township board, is a matter of legislative prerogative (see *Hill v. Butler* (1982), 107 Ill. App. 3d 721, 725-6), and is necessarily defined by the statutes which constitute grants of such powers. The fact that electors have been delegated the right to act directly upon specified township matters, however, does not mean that the electors have the plenary power to act upon any matter which may in some way relate to the township, or to exercise those powers which the General Assembly has granted to the township board or to other township officers.

It is, therefore, my opinion that the electors of a township, at an annual or special township meeting, may exercise only those powers which the General Assembly has delegated to them by statute, or those implied powers which are essential to the exercise of the powers which have been expressly granted.

Sincerely,

JAMES E. RYAN  
Attorney General

The following are the actual sections mentioned above from the Illinois Compiled Statutes (ILCS):

(60 ILCS 1/40-15)

Sec. 40-15. Voting.

(a) All questions upon motions made at township meetings shall be determined by a majority of the electors present and voting, and the moderator shall ascertain and declare the result of the vote upon each question.

(b) When the result of any vote shall, upon the moderator's declaration, be questioned by one or more of the electors present, the moderator shall make the vote certain by causing the voters to rise and be counted or by a division of the voters.

(Source: P.A. 82-783; 88-62.)

(60 ILCS 1/80-10)

Sec. 80-10. Board meetings; township and road district accounts.

(a) The township board shall meet at the township clerk's office for the purpose of examining and auditing the township and road district accounts before any bills (other than general assistance, obligations for Social Security taxes as required by the Social Security Enabling Act, and wages that are subject to the Illinois Wage Payment and Collection Act) are paid. The board may meet at other times as they determine. The township board may consider and approve bills individually or in a summary statement of any number of bills.

(b) Upon the request of the supervisor or of any 2 board members, the township clerk shall call a meeting at the time requested and shall furnish to the board members at least 48 hours' notice of the meeting.

(c) The township board may declare a vacancy in the office of township supervisor or trustee if the supervisor or a trustee has 5 or more consecutive unexcused absences from regularly scheduled township board meetings.

(d) The township board may adopt rules not inconsistent with this

Code to govern its meetings. The rules may provide for excused absences of the supervisor or trustees from township board meetings.

(e) All meetings of the township board shall be open to the public as provided in the Open Meetings Act.

(Source: P.A. 88-62; incorporates 88-360; 88-670, eff. 12-2-94.)

(60 ILCS 1/30-20)

Sec. 30-20. Powers of electors at annual township meeting.

(a) The electors present at the annual township meeting have the powers enumerated in this Article 30. An elector is a person registered to vote within the township no less than 28 days before the date of the annual meeting.

(b) Notwithstanding the provisions of any other Act, before establishing or increasing any township tax rate that may be established or increased by the electors at the annual township meeting, a petition containing the signatures of not less than 10% of the registered voters of the township must be presented to the township clerk authorizing that action.

(c) Nothing in this amendatory Act of 1983 (Public Act 83-281) shall be construed to alter existing tax rates.

(Source: P.A. 88-62; 89-331, eff. 8-17-95.)

(60 ILCS 1/30-50)

Sec. 30-50. Purchase and use of property.

(a) The electors may make all orders for the purchase, sale, conveyance, regulation, or use of the township's corporate property (including the direct sale of single township road district property) that may be deemed conducive to the interests of its inhabitants, including the lease, for up to 10 years at fair market value, of corporate property for which no use or need during the lease period is anticipated at the time of leasing. The property may be leased to another governmental body, however, or to a not-for-profit corporation that has contracted to construct or fund the construction of a structure or improvement upon the real estate owned by the township and that has contracted with the township to allow the township to use at least a portion of the structure or improvement to be constructed upon the real estate leased and not otherwise used by the township, for any term not exceeding 50 years and for any consideration. In the case of a not-for-profit corporation, the township shall hold a public hearing on the proposed lease. The township clerk shall give notice of the hearing by publication in a newspaper published in the township, or in a newspaper published in the county and having general circulation in the township if no newspaper is published in the township, and by posting notices in at least 5 public places at least 10 days before the public hearing.

(b) If a new tax is to be levied or an existing tax rate is to be increased above the statutory limits for the purchase of the property, however, no action otherwise authorized in subsection (a) shall be taken unless a petition signed by at least 10% of the registered voters residing in the township is presented to the township clerk. If a petition is presented to the township clerk, the clerk shall order a referendum on the proposition. The referendum shall be held at the next annual or special township meeting or at an election in accordance with the general election law. If the referendum is ordered to be held at the township meeting, the township clerk shall give notice that at the next annual or special township meeting the proposition shall be voted

upon. The notice shall set forth the proposition and shall be given by publication in a newspaper published in the township. If there is no newspaper published in the township, the notice shall be published in a newspaper published in the county and having general circulation in the township. Notice also shall be given by posting notices in at least 5 public places at least 10 days before the township meeting. If the referendum is ordered to be held at an election, the township clerk shall certify that proposition to the proper election officials, who shall submit the proposition at an election. The proposition shall be submitted in accordance with the general election law.

(c) If the leased property is utilized in part for private use and in part for public use, those portions of the improvements devoted to private use are fully taxable. The land is exempt from taxation to the extent that the uses on the land are public and taxable to the extent that the uses are private.

(d) Before the township makes a lease or sale of township or road district real or personal property, unless the personal property has a sale value of \$200 or less, the electors shall adopt a resolution stating the intent to lease or sell the real or personal property, describing the property in full, and stating the terms and conditions the electors deem necessary and desirable for the lease or sale. A resolution stating the intent to sell real property shall also contain pertinent information concerning the size, use, and zoning of the property. The value of real property shall be determined by a State licensed real estate appraiser. The appraisal shall be available for public inspection. The resolution may direct the sale to be conducted by the staff of the township or by listing with local licensed real estate agencies (in which case the terms of the agent's compensation shall be included in the resolution).

When a township sells township or road district personal property valued for sale at \$200 or less, the electors are not required to adopt a resolution. Prior to the sale, the clerk shall prepare a notice stating the intent of the township or road district to sell personal property with a sale value of \$200 or less and describing the property in full.

The clerk shall thereafter publish the resolution or personal property sale notice once in a newspaper published in the township or, if no newspaper is published in the township, in a newspaper generally circulated in the township. If no newspaper is generally circulated in the township, the clerk shall post the resolution or personal property sale notice in 5 of the most public places in the township. In addition to the foregoing publication requirements, the clerk shall post the resolution or personal property sale notice at the office of the township (if township property is involved) or at the office of the road district (if road district property is involved). The following information shall be published or posted with the resolution or personal property sale notice: (i) the date by which all bids must be received by the township or road district, which shall not be less than 30 days after the date of publication or posting, and (ii) the place, time, and date at which bids shall be opened, which shall be at a regular meeting of the township board.

All bids shall be opened by the clerk (or someone duly appointed to act for the clerk) at the regular meeting of the township board described in the notice. With respect to township personal property, except personal property valued for sale at \$200 or less, the township board may accept the high bid or any other bid determined to be in the

best interests of the township by a majority vote of the board. With respect to township real property, the township board may accept the high bid or any other bid determined to be in the best interests of the township by a vote of three-fourths of the township board then holding office, but in no event at a price less than 80% of the appraised value. With respect to road district property, except personal property valued for sale at \$200 or less, the highway commissioner may accept the high bid or any other bid determined to be in the best interests of the road district. In each case, the township board or commissioner may reject any and all bids. With respect to township or road district personal property valued for sale at \$200 or less, the clerk shall accept at least 2 bids and the township board or highway commissioner shall accept the highest bid. This notice and competitive bidding procedure shall not be followed when property is leased to another governmental body. The notice and competitive bidding procedure shall not be followed when property is declared surplus by the electors and sold to another governmental body.

(Source: P.A. 89-100, eff. 7-7-95; 89-331, eff. 8-17-95; 89-626, eff. 8-9-96; 90-751, eff. 1-1-99.)

(60 ILCS 1/30-150)

Sec. 30-150. Police protection by municipality; county under 1,000,000. In counties having a population of less than 1,000,000, the electors may authorize the township board to contract with one or more incorporated municipalities lying wholly or partly within the boundaries of the township, or with advice and consent of the sheriff in the county in which the request for contract services is made, based upon a determination of law enforcement needs of the area in which contract services are sought with the county within which the township is located to furnish police protection in the area of the township that is not within the incorporated area of any municipality having a regular police department.

(Source: P.A. 91-633, eff. 12-1-99.)

(60 ILCS 1/30-155)

Sec. 30-155. Police protection by county in county under 1,000,000; special taxing district.

(a) In counties having a population of less than 1,000,000, the electors may authorize the township board to contract with the county sheriff within which the township is located to furnish police protection in the unincorporated area of the township.

(b) The township board may adopt a resolution declaring the unincorporated area of the township a special police district for tax purposes. Proof of the adoption of the resolution authorizes the county clerk to extend a tax upon the special police district in the amount specified in the annual township tax levy, but not to exceed a rate of .10% of the value of taxable property as equalized or assessed by the Department of Revenue.

(c) Whenever a resolution creating a special police district has been adopted, the township board shall order the proposition submitted to the voters within the territory of the proposed special police district at an election. The clerk shall certify the proposition to the proper election officials. Notice shall be given and the election conducted in accordance with the general election law. The proposition shall be in substantially the following form:

Shall a special police district be created to serve the

unincorporated areas of (name of township), and shall a tax be levied at a rate of not more than 0.10% of the value of taxable property in the district as equalized or assessed by the Department of Revenue?

The votes shall be recorded as "Yes" or "No".

(d) If a majority of votes cast on the proposition is in favor of the special police district, the district shall be created.

(Source: P.A. 83-209; 88-62.)

(60 ILCS 1/30-80)

Sec. 30-80. (Repealed).

(Source: P.A. 88-62. Repealed by P.A. 90-210, eff. 7-25-97.)

(60 ILCS 1/35-5)

Sec. 35-5. Special township meeting. Special township meetings shall be held when the township board (or at least 15 voters of the township) file in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township. The statement also shall set forth the objects of the meeting. The special township meeting shall be held no less than 14 nor more than 45 days after the written request is filed in the office of the township clerk. Special township meetings may not begin before 6 p.m.

(Source: P.A. 88-62; incorporates 88-360; 88-670, eff. 12-2-94.)

(60 ILCS 1/35-25)

Sec. 35-25. Exercise of annual meeting powers. When the special meeting is called by the township board in the manner provided by this Article, the electors may take any action authorized by Article 30 that could have been taken at an annual township meeting.

(Source: P.A. 82-783; 88-62.)

#### SECTION 8. POWERS AND OFFICERS OF SCHOOL DISTRICTS AND UNITS OF LOCAL GOVERNMENT OTHER THAN COUNTIES AND MUNICIPALITIES

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 law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch.

(Source: Illinois Constitution.)