760929.1



**HOME RULE CITIES: Payments in lieu of taxes by municipally-owned utilities.**

**VILLAGES: Payments in lieu of taxes by municipally-owned utilities.**

**Payments in lieu of taxes made by a municipally-owned utility are not taxes imposed upon the utility by the municipality and therefore have no effect on constitutional and statutory millage limitations.**

Opinion No. 5056 September 29, 1976.

Representative Barbara-Rose Collins
State Representative
21st District
The Capitol
Lansing, Michigan

You have requested my opinion upon the following restated questions:

1. Are payments in lieu of taxes made by a municipally-owned utility to the municipality in legal effect a tax imposed upon the utility by the municipality?

2. Is the millage limitation of the municipality affected by the revenue from such payments in lieu of taxes?

By way of background, it may be noted that cities and villages are authorized by Const 1963, art 7, § 24 to acquire, own or operate, within or without their corporate limits, public service facilities for supplying water, heat, power, sewage disposal and transportation. Implementing legislation appears in the Home Rule Cities Act, 1909 PA 279, § 4f; MCLA 117.4f; MSA 5.2079, and in the Village Incorporation Act, 1909 PA 278, § 24; MCLA 78.24n; MSA 5.1534n. It may also be noted that municipally-owned properties used for public purposes are exempt from taxation pursuant to the General Property Tax Law, 1893 PA 206, § 7; MCLA 211.7; MSA 7.7, and that electrical utilities owned by municipalities are within such exemption. See *City of Traverse City* v *Township of Blair,* 190 Mich 313; 157 NW 81 (1916).

Municipally-owned utilities realize their revenues from rates charged for services provided to consumers, such utility rates are not taxes. *Ripperger* v *City of Grand Rapids,* 338 Mich 682; 62 NW2d 585 (1954); *Preston* v *Board of Water Commissioners of Detroit,* 117 Mich 589; 76 NW 92 (1898); also, a municipality is not required to furnish the services of its utility at cost, but may charge a rate which will yield a profit.

In recognition of these concepts, it is clear that payments in lieu of taxes made by the municipally-owned utility are a reasonable expenditure calculated to pay for the cost of municipal services provided to it and, as such, are not taxes imposed upon the utility or the consumer of its services. On the contrary, the avoidance of payment of the cost of these services would amount to a subsidization by the municipality to the utility. Thus, since a

payment in lieu of taxes is not a tax imposed upon the utility, the municipality's millage limitations are unaffected by such payments.

FRANK J. KELLEY,
*Attorney General.*

760930.1

**DEEDS AND CONVEYANCES: Grant for airport purposes.**

**PUBLIC LANDS: Deed for airport purposes.**

**Where a village acquired land from the state for a valuable consideration by a deed stating that the land shall be used for airport purposes, the village may lease a portion of the premises to a private party without breaching any deed covenants.**

Opinion No. 5099 September 30, 1976.

Patrick R. Joslyn
Prosecuting Attorney
Tuscola County Courthouse
Caro, Michigan 48723

You have requested my opinion as to whether the Village of Caro may lease to a private party a portion of premises quit-claimed to the Village by the State of Michigan by instrument dated May 16, 1961, and recorded on August 11, 1961, in Liber 341, Page 509, Tuscola County Records, without breaching any deed covenants.

The cited conveyance, authorized by 1959 PA 103, recites in part:

> "[The State of Michigan] for and in consideration of the sum of Twenty-Five Thousand Dollars ($25,000.00), to it in hand paid, . . ., does by these presents grant, bargain, sell, remise release and QUIT-CLAIM unto the . . . [VILLAGE OF CARO] for airport purposes all that land known and described as follows:
>
> "[Description omitted]
>
> "TOGETHER with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining; TO HAVE AND TO HOLD by the said . . . [Village] the above described premises forever."

The deed in such form was sufficient to vest title in the village in fee simple absolute free from any conditions or covenants. *Quinn* v *Pere Marquette R Co*, 256 Mich 143; 239 NW 376 (1931); *Briggs* v *City of Grand Rapids*, 261 Mich 11; 245 NW 555 (1932); RS 1846 Ch 65, §§ 3 and 5; MCLA 565.3, 565.5; MSA 26.522, 26.524; 1959 PA 103.

In *Quinn* v *Pere Marquette R Co, supra,* lands were conveyed to a railroad company for the *nominal sum* of $1.00:

> ". . . to be used for railroad purposes only."