



**United Counties Council of Illinois**

[UCCI@unitedcounties.com](mailto:UCCI@unitedcounties.com)  
[www.unitedcounties.com](http://www.unitedcounties.com)

**217.544.5585**

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June 1, 2023

To: UCCI Member

**Re: Sale of County-Owned Nursing Home**

Legal counsel for United Counties Council of Illinois is aware that the State's Attorney previously drafted a memorandum relating to the potential sale of a nursing home and whether such a sale must be approved by the voters through a referendum or if the County Board can approve the sale by 2/3 vote of the members without the need for a referendum.

The background regarding the nursing home taken from materials provided by the County (and assumed to be correct for purposes of this analysis) is as follows: An entity has existed in the county since as far back as 1882 that went by various names. In 1961, the County Board voted to apply for a state licensure as a nursing home. The county applied for and received the license.

In 1969, the County Board was notified that unless they upgraded their facilities, the license would not be renewed past June 1970. In January 1970, the County Board passed a resolution to submit the question of a bond issuance and temporary tax increase to make payments on the bonds to the voters via a referendum. The bond issuance and referendum were for the purpose of constructing a new building to house the county nursing home. According to the County's materials, the referendum does use the phrase "to erect" in relation to nursing home buildings. The referendum passed in March 1970. The building was constructed and opened in April or June of 1971.

The issue is whether the County Board can approve the sale of the nursing home by 2/3 vote without a referendum or is such a referendum required. The relevant statute, 55 ILCS 5/5-21001, gives the county boards of counties that establish and maintain a county nursing home, as provided in 55 ILCS 5/5-1005, certain powers, and states the following in paragraph 9:

Upon the vote of a 2/3 majority of all the members of the board, to sell, dispose of or lease for any term, any part of the home properties in such manner and upon such

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terms as it deems best for the interest of the county, and to make and execute all necessary conveyances thereof in the same manner as other conveyances of real estate may be made by a county. However, if the home was erected after referendum approval by the voters of the county, it shall not be sold or disposed of except after referendum approval thereof by a majority of the voters of the county voting thereon.

55 ILCS 5/5-21001. It has been correctly pointed out that the term “erect” can mean to “construct” or “to establish.” Proponents of the sale contend that the word “erected” as used in the statute means “to establish”. Since the nursing home, as an entity, was established in 1961 by a vote of the County Board, it was not “erected” after referendum approval and therefore only a 2/3 vote of the County Board is required. Opponents of the sale have taken the position that “erected” means “to construct”, and the current nursing home building was constructed after the bond and levy referendum in 1970. Therefore, the home can only be sold after a referendum.

It is our understanding that the States Attorney has reasoned that the better construction of the term “erected” as used in Section 5-21001 is “to establish”. In coming to this conclusion, the State’s Attorney reasoned that (1) the relevant paragraph relates to the sale or closure of the nursing home and if “erect” is construed to mean “to establish” then the statute discusses the opening and closing of the legal entity, which is more rational than discussing the closing and a medial event; (2) such an interpretation gives the interpreter a certain and specific event with which to make his or her determination (a nursing home can only be established once but it may inhabit many buildings); and (3) a nursing home is a legal entity, not a particular building, and if the building is not the nursing home then the referendum to issue debt to build the building is not a referendum to erect the nursing home.

The above reasoning and resulting interpretation are not unreasonable. Section 5-21001 uses terms such as building, home properties, and home without any indication of what those terms mean. However, it is possible that a court could interpret the term “erected” to mean “constructed”.

The Illinois Supreme Court has described the rules regarding statutory interpretation as follows:

When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning. We consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it. **Words and phrases should not be construed in isolation but must be interpreted in light of other relevant**

**provisions of the statute.** No part of a statute should be rendered meaningless or superfluous. Clear and unambiguous language will be applied as written. In addition, specific statutory provisions will control over general provisions on the same subject. Courts must construe statutes relating to the same subject matter with reference to one another so as to give effect to the provisions of each, if reasonable. Moreover, courts will presume that the legislature did not intend to enact a statute that leads to absurdity, inconvenience, or injustice.

*Van Dyke v. White*, 2019 IL 121452, ¶ 46 (internal citations omitted and emphasis added). The Illinois Supreme Court has gone farther in reasoning that “[t]he plain and **obvious** meaning of the language used by the Legislature is the safest guide to follow in construing any act...” *Landry v. E.G. Shinner & Co.*, 344 Ill. 579, 584 (1931) (emphasis added).

Initially, it should be noted that paragraph 9 of Section 5-21001 provides for the board’s power to “sell, dispose of or lease for any term, **any part of the home properties.**” The use of the term home properties indicates this paragraph is talking about the sale of physical properties, *i.e.*, buildings. The fact the statute is governing the sale or disposal of a building could be used to argue the interpretation of the term “erect” means “to construct” a building rather than “to establish” an entity.

Other portions of the relevant statute(s) could be similarly used to conclude the term “erect” means “to construct.” As stated, the first sentence of Section 5-21001 states “In any county which establishes and maintains a \* \* \* county nursing home for the care of infirm or chronically ill persons, as provided in Section 5-1005, the County Board shall have power” and then lists 10 paragraphs of powers. Section 5-1005, paragraph 6, provides counties the power “**To cause to be erected**, or otherwise provided, **suitable buildings** for, and a \* \* \* county nursing home for the care of such sick, chronically ill or infirm persons.” Thus, Section 5-21001 starts off by referring to a statute that gives counties the power to “erect” suitable buildings for nursing homes. Additionally, the term “erect” is used elsewhere in section 5-21001 that could be argued indicates the meaning of that term is “to construct”. For example, paragraph 1 of Section 5-21001 provides a county board the power to acquire land in the name of the county “upon which **to erect** and maintain **the home.**” This would seem to mean the county could acquire land to build the home. Later, that paragraph speaks in terms of “erection of buildings.” Paragraph 8 gives a county board the power to “make appropriations from the county treasury for the purchase of land and the **erection of buildings** for the home.” Such use of the phrase “erection of buildings” indicates the term “erect” means “to construct.” Thus, if the

term “erect” is interpreted to mean “to construct” in these other parts of the statute, then it could be argued the more obvious meaning of “erect” in paragraph 9 is “to construct”.

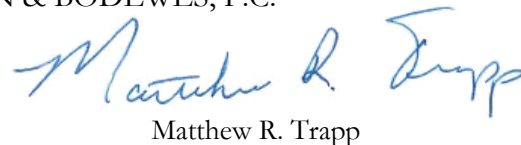
We also believe that it could be argued that requiring a referendum in this situation would be consistent with a process whereby the building was only built after taxpayer approval of the bonds and levy that made the construction financially possible. It would make sense that if a building is built with funds from a tax approved by referendum that the taxpayers would have to approve the sale of such property.

Given the County Board is faced with competing interpretations of the term “erect”, both of which are reasonable, the County Board could secure an additional, more formal interpretation that it could rely on in deciding how to proceed by requesting an opinion from the Illinois Attorney General. “Well-reasoned opinions of the Attorney General interpreting or construing an Illinois statute are persuasive authority and are entitled to considerable weight in resolving a question of first impression, although they do not have the force and effect of law.” Vine St. Clinic v. HealthLink, Inc., 222 Ill. 2d 276, 283 (2006). While not binding, such an opinion would reach a conclusion and give a legal basis for doing so. Unfortunately, there is no mandatory response time for such requests, so there is no definite timeline for receiving a responsive opinion. However, the County Board could utilize such an opinion and its reasoning in making its decision on how to proceed with its dealings involving the County’s nursing home.

At the request and direction of UCCI this opinion was prepared by

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

  
Jason E. Brokaw

  
Matthew R. Trapp