



Municipal Zoning Laws May Apply to School Districts According to New Illinois Attorney General Opinion

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A recent opinion issued by the Illinois Attorney General's Office states that "public school districts are subject to municipal and county zoning ordinances, except to the extent that compliance with local zoning would frustrate a school district's statutory objectives." While the Attorney General's opinion is not a binding legal precedent, it is persuasive authority from the State's top lawyer. As a result, there may be increased pressure on public school districts to, at the very least, subject themselves to the municipal zoning process. If at the conclusion of the process a school district believes that the zoning ordinance will frustrate the school district's statutory objectives, the school district may seek redress in the courts.

For years there has been no clear answer to the question of whether school districts are subject to zoning ordinances. Illinois law exempts public school districts from compliance with local building ordinances because there is already a comprehensive set of building regulations in the School Code. It has been argued that the exemption from compliance with local building ordinances also extends to zoning ordinances. The Illinois Attorney General took up this question after receiving a letter from State Superintendent of Education Christopher Koch asking for an official opinion.

Initially, the Attorney General's Opinion notes that while there are clear grants of authority to municipalities and counties to regulate zoning, there is no statutory provision that clearly states whether public school districts are subject to zoning laws. Therefore, the Attorney General looked at multiple statutory provisions to deduce an answer. The Attorney General stated that public school districts have only those powers expressly granted to them by the legislature. Next, it was noted that one provision of the School Code provides that a school board may seek zoning changes, variations, or special uses for property held or controlled by the school district. (105 ILCS 5/10-22.13a). This grant of authority, according to the Attorney General's reasoning, would be unnecessary if school districts were not subject to zoning ordinances. Finally, the School Code also provides that school boards remain subject to those duties imposed upon them by other laws. (105 ILCS 5/10-20). Reading these statutory provisions together, the Attorney General concluded that public school districts are subject to municipal and county zoning ordinances.

While the Attorney General concluded that public school districts are subject to local zoning ordinances, she also noted that case law provides for judicial review where zoning ordinances are administered in an unreasonable, arbitrary, or discriminatory manner to thwart or frustrate another public entity's statutory duties. She concluded that if compliance with local zoning ordinances would unduly interfere with the achievement of a public school district's statutory objectives, the school district could seek judicial relief. Whether



administration of the zoning ordinance unduly interferes with a public school district's ability to meet its statutory objectives would be a question of fact for a court to decide.

Ultimately, the Attorney General's Opinion suggests the best solution is cooperation between municipalities or counties and public school districts. If cooperation breaks down, the ultimate recourse would be the courts. It remains our firm's position that there are reasonable arguments that counter the Attorney General's opinion. In the meantime, however, and in the absence of an Illinois appellate court decision to the contrary, municipalities and counties have new support for their efforts to regulate public school district facilities through zoning ordinances.

With that said, if courts adopt the Attorney General's opinion, school districts would still have the ability to seek relief in court from zoning ordinances that frustrate a school district's statutory objectives. For example, if a school district's plans to build a new school required zoning relief under a municipality's zoning code, the school district would be required to submit to the municipality's zoning process (e.g., be subject to a public hearing before a plan commission and final ordinance approval by the corporate authorities). The developed school would also likely be subject to certain zoning requirements, such as set backs and height limitations. If, however, the zoning regulations or process would prohibit the construction of the school or significantly impair the school district's ability to provide educational services to students, the school district could seek redress in court. The court, in such a case, should hold that such zoning restrictions are not applicable as they would frustrate the school district's objectives.

More Information

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