

CITY OF CHICAGO DEPARTMENT OF LAW

TO: John McDonough

DATE: April 26, 2024

RE: IDOT Request for conveyance of Dedicated Streets

FROM: James Hughes

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I have been assigned to research the various issues arising from the request by the Illinois Department of Transportation (IDOT) that the City of Chicago through its Department of Transportation (CDOT) enter into an Intergovernmental Agreement with respect to certain highway properties acquired by the City (Draft IGA).

Section 3 of the Draft IGA states as follows:

“The City shall transfer to the State of Illinois by warranty deed (in a form approved by IDOT) the properties it acquired for the Project that is (sic) adjacent to State of Illinois right-of-way and denoted in Attachment A.”

After researching the issue, we’ve found that such a transfer is not authorized under Illinois law.

The Streets are Held in Trust for the People of the State of Illinois Regardless of Their Means of Acquisition or Dedication.

An unbroken line of Illinois cases has stated that a municipality holds the streets in trust for the people of the state of Illinois. The oft cited case of Stack v. City of East St. Louis, 85 Ill. 377, 379 (1877), stated that a municipality holds a street in trust for the use of the public for purposes of the street, and has no power to sell, lease or otherwise appropriate it to other purposes. A more recent case, People Gas Light & Coke Co. v. City of Chicago, 413 Ill. 457 (1953) states a similar sentiment

“A municipality holds a street in trust regardless of whether it obtained a highway easement or the fee interest to the ground beneath the street.”

The public trust restrictions on dedicated property are created either by the statutory authority under which the public body holds the property, or by restrictions on the deed or conveyance. Paepcke v. Public Building Commission of Chicago, 46 Ill.2d 330, 336-337 (1970). Since a municipality is not limited to acquiring real estate for one single purpose, local streets are created through limitations imposed in connection with a specific acquisition, either at the time of acquisition, i.e., plats and deeds of dedication, or by later action of the corporate authorities, i.e., acquired property is “opened to traffic” by an ordinance passed by the City Council.

There is no authority under Illinois law for the conveyance of a public street by warranty deed to IDOT as provided in the IGA or to anyone.

Once a property has been impressed with a public trust through dedication or by other means, “the question is whether there has been a sufficient manifestation of legislative intent to permit the diversion and reallocation contemplated by the [project].” Paepcke v. Public Building Commission of Chicago, 46 Ill.2d 330, 342 (1970)

In Mamolella v. First Bank of Oak Park 97 Ill.App.3d 579 (1981), the court held that an action for mandamus by a member of the municipality is based on the municipality’s duty to keep public ways unobstructed and in reasonably safe condition, as the city has always held the street in trust for the public and has no power to grant any sort of easement for a private group or individual’s use.

Similarly, in Jamison v. City of Zion, 359 Ill.App.3d 268 (2005) the court favorably cites Mamolella v. First Bank of Oak Park 97 Ill.App.3d 579 reciting that a city holds streets in trust for the public and has no statutory power to grant an easement for private use. Jamison v. Zion, 359 Ill.App.3d 268, 272 (2005). The court in Jamison continued, finding specific statutory authority for the City’s

right to regulate the use of its streets and abate nuisances arising from illegal occupations of streets. In both *Malmolella* and *Jamison*, the absence or existence of statutory authority was dispositive on determining a municipality's authority to take a specific action regarding a local street.

With respect to IDOT's specific request of a transfer of streets by warranty deed, neither the Illinois Highway Code nor the Illinois Municipal Code authorizes such a transfer.

The Illinois Highway Code does not authorize any transfer of a local street by warranty deed. Unlike the Article 4, Division 5 of the Highway Code, which provides IDOT's power to dispose of state highway right of way, Article 7 of the Highway Code which governs municipal streets contains no similar acquisition or disposition sections. Instead, the Article 7 explicitly defers to the Illinois Municipal Code to define a municipality's powers to dispose of right of way:

"Sec. 7-101. Streets and alleys, including bridges and other structures, which are or will become part of the municipal street system may be laid out, established, constructed, reconstructed, altered, widened, relocated, improved, maintained, repaired and vacated by the respective municipalities in the manner provided in the Illinois Municipal Code, as heretofore or hereafter amended;" 605 ILCS 5/7-101.

Notable in Section 7-101 is that it only uses the word "vacate" and does not use the words "dispose of" or "sale" like Section 605 ILCS 5/4-508. The reason for that choice of word is because the Municipal Code establishes vacation as the sole method of conveyance of local streets.

The provisions of the Municipal Code that provide for the vacation of streets, commonly known as the Vacation Statute, provide as follows:

"Whenever the corporate authorities of any municipality, whether incorporated by special act or under any general law, determine that the public interest will be subserved by vacating

any street or alley, or part thereof, within their jurisdiction in any incorporated area, they may vacate that street or alley, or part thereof, by an ordinance”. 65 ILCS 5/11-91-1.

The transfer of title effected by the vacation of a street is addressed by 65 ILCS 5/11-91-2 which says:

“ Except in cases where the deed, or other instrument, dedicating a street or alley, or part thereof, has expressly provided for a specific devolution of the title thereto upon the abandonment or vacation thereof, whenever any street or alley, or any part thereof, is vacated under or by virtue of any ordinance of any municipality, the title to the land included within the street or alley, or part thereof, so vacated, vests in the then owners of the land abutting thereon, in the same proportions and to the same extent, as though the street or alley has been dedicated by a common law plat (as distinguished from a statutory plat) and as though the fee of the street or alley had been acquired by the owners as a part of the land abutting on the street or alley.”

This section specifically applies the law relating to the transfer of title in a common law vacation of streets to any fee owned streets.

To summarize, under applicable law, the only way for City to convey the street to IDOT would be to vacate it, and to do so, IDOT would need to own the property abutting the public way or otherwise hold the reversionary rights at the time of the vacation.

The Intergovernmental Cooperation Act does not authorize the City to give a deed for the property, since that would expand the City’s powers beyond what is otherwise authorized by law.

The Intergovernmental Cooperation Act, 5 ILCS 220/5 states that “any one or more public agencies may contract with any one or more other public agencies to perform any governmental service,

activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law.”

However, the granting of authority to make cooperative agreements does not allow an expansion of a municipality’s powers to perform the obligations that are not authorized by law. .

In Rajterowski v. City of Sycamore 405 Ill.App.3d 1086 (2010), the court states: “Certain entities may not, by entering into intergovernmental agreements, circumvent statutory requirements or limitations,the Intergovernmental Cooperation section of the Constitution and its statutory counterpart, the Intergovernmental Cooperation Act, are not grants of authority to undertake jointly functions that the cooperating entities cannot undertake individually.” 405 Ill.App.3d at 1119.

Another case affirms this same proposition. I-57 and Curtis, LLC v. Urbana and Champaign Sanitary District 164 N.E.3d 99 (2020).

Conclusion

For these reasons, the City cannot provide a warranty deed to IDOT for the streets as required in the Draft Agreement. Further, since title to a street is always held in trust for the People of the State of Illinois, any such transfer appears to be an unnecessary act. Pursuant to and in implementation of such public trust, the Illinois Highway Code vests in the highway authority with jurisdiction the full and comprehensive authority to act upon and over such route, including the power to dispose of it in accordance with the Highway Code, regardless of whether another highway authority originally conducted or participated in its acquisition.