



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



April 25, 1991

FILE NO. 91-020

COUNTIES:

Determination of Political
Affiliation of Members of
Board of Review

Honorable Norbert J. Goetten
Greene County State's Attorney
Greene County Courthouse
Carrollton, Illinois 62016

Dear Mr. Goetten:

I have your letter wherein you inquire regarding section 8 of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 489), which provides, in pertinent part:

"* * * The board of review shall at all times consist of 2 members affiliated with the political party polling the highest vote for any county office in the county, and one member of the party polling the second highest vote for the same county office in the county at the last general election in the county prior to the time any appointment is made by virtue of this section.

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Specifically, you ask whether, in determining the political affiliation of the members of the board of review, the vote in either the election of a resident circuit judge or an at-large election for four county board seats may be considered. For the reasons hereinafter stated, it is my opinion that the composition of the board of review cannot be based upon either a judicial or an at-large county board race.

According to the information which you have furnished, among the officers elected at the November 6, 1990, general election in Greene County were: county clerk, county treasurer, county sheriff, four county board members and a resident circuit judge. The highest vote total was recorded for the unopposed candidate for the office of county treasurer. In opinion S-1425, issued April 13, 1979 (1979 Ill. Att'y. Gen. Op. 46), however, Attorney General Scott advised that because one member of the board of review must be affiliated with the political party polling the second highest vote for the same office as the party polling the highest vote, the political affiliation of board of review members must necessarily be based upon a contested election. Therefore, although the unopposed candidate for treasurer polled the highest number of votes, that race cannot be considered in determining the board of review membership.

The next highest vote in a two-candidate race for a single office in the county was polled by a candidate for

resident circuit judge. You question whether this was an election for a "county office," for purposes of section 8 of the Revenue Act of 1939.

Article VII, sections 3 and 4 of the 1970 Constitution (Ill. Const. 1970, art. VII, secs. 3, 4) provide for the selection of county board members and, in each county, a sheriff, county clerk, treasurer, coroner, recorder, assessor, auditor "and such other officers as provided by law or by county ordinance." These are county offices and comprise the group of officers responsible for governing the county. In contrast, resident circuit judges, even though elected within each county, are elected as officers in the judicial branch of State government pursuant to Article VI of the constitution. (Ill. Const. 1970, art. VI, sec. 7,12.) There is only one circuit court in each judicial circuit, and a resident circuit judge serves the entire circuit, not just the county from which he is elected. (Ill. Const. 1970, art. VI, sec. 7(b).) Further, each circuit judge is subject to assignment by the Supreme Court to any court in the State. (Ill. Const. 1970, art. VI, sec. 16.) Based upon these provisions, it is my opinion that the office of resident circuit judge is a State, not a county, office. Consequently, the election of a resident circuit judge may not be considered in determining the political affiliation of board of review members.

In the November 6, 1990, general election in Greene County, four county board seats were filled at-large. Five

candidates ran for four seats. A candidate affiliated with one major party polled 4575 votes, and four other candidates, all of whom were affiliated with the other major party, polled 4564, 4158, 3357, and 3198, respectively. The party with which the single candidate was affiliated claims to have polled the highest number of votes for a "county office", for purposes of section 8 of the Revenue Act of 1939. It is my opinion, however, that this race also cannot be used as the basis for determining the political affiliation of the board of review.

Section 8 of the Revenue Act of 1939 requires that 2 members of the board of review be affiliated with the party polling the highest vote for a county office, and that one member be affiliated with the party polling the second highest vote for the same office. In this instance, the candidate receiving the highest vote total cannot be said to have been running for the same office as the other four candidates. All five were running for election to any one of four offices, and four of the five were, in fact, elected to four different offices. Since both of the candidates who polled the highest vote totals were elected to separate offices, they cannot be said to have stood for election to the same office.

Implicit in the language of section 8 is the requirement that the political affiliation of the members of the board of review be based upon a race for a single county office for which there are two or more candidates running.

Several candidates running for multiple offices are not running for the same office. Consequently, it is impossible for one party to poll the highest vote and another the second highest vote for the same office, in those circumstances, just as such a result is impossible where one candidate runs unopposed for an office. Therefore, it is my opinion that an at-large election for multiple county board seats cannot be considered in effectuating the provisions of section 8 of the Revenue Act of 1939, as they relate to the composition of the board of review.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is centered on the page.

ROLAND W. BURRIS
ATTORNEY GENERAL