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FILE NO. S-680

COUNTIES:
County Board
Change in Composition

Honorable Philip G. Reinhard
State's Attorney
Winnebago County
Courthouse Building - Suite 619
Rockford, Illinois 61101

Dear Mr. Reinhard:

This is to acknowledge receipt of your letter, in which you state, in part, as follows:

"The chairman of the Winnebago County Board has requested that I solicit your opinion concerning the following questions which relate to County Board elections to be held in the Spring of 1974.

At its meeting held June 24, 1971, the Board of Supervisors of the County of Winnebago adopted a County Board Election Reapportionment Plan Resolution to be effective for the ten (10) year period, from and after July 1, 1971. The Plan was adopted pursuant to the provisions of Sections 2 and 3 of 'An Act relating to the composition and election of county boards in

certain counties', (Ill. Rev. Stat. 1971, Chapter 34, Pars. 832 & 833), and included, among other things, the following elements:

a). Division of the area of the County into seven (7) multi-member county board election districts having substantially equal populations. Four (4) County Board Members were to be elected from each of the seven (7) districts, resulting in total Board memberships of twenty eight (28) members.

b). Provisions of the plan required use of the so-called 'caucus method' of nominating candidates (by established political parties) for election to the office of County Board Member rather than nomination at a primary election.

c). Provision was made for election of the County Board Chairman by vote of the membership of the County Board, rather than by the voters of the County at a General Election.

Presently, the Winnebago County Board is considering the feasibility of amending the 1971 Reapportionment Plan Resolution particularly as to the number of Board Members, the method of nominating Board Member candidates by established political parties and the method of electing the County Board Chairman. A question immediately arises as to whether these matters are so integral a part of the 1971 County Board Reapportionment Plan as to preclude their change or modification, except every ten (10) years, as provided by Section 2 of the aforementioned County Board Reapportionment

Mr. Philip G. Rainhard -3

Act, (Ill. Rev. Stat. 1971, Chapter 34,
Para. 832).

Please advise your opinion on the following
questions:

1). May the County Board amend its 1971
Reapportionment Plan so as to reduce the total
number of Board Members to twenty one (21)
persons in 1974 and fourteen (14) persons in
1976, by the simple expedient of electing only
one (1) Board Member from each of the seven (7)
established County Board Districts in the Board
Member elections scheduled for 1974 and 1976?

If this procedure is permissible, may the County
Board further amend its 1971 Plan Resolution so
as to reduce the County Board Membership to seven
(7) members, one for each County Board District,
during the remainder of the present ten (10)
year reapportionment plan?

In answering please consider the effect of the
following statutory provisions: Chapter 34,
Para. 839 and Chapter 46, Para. 2-26.01, Ill.
Rev. Stats., 1971.

2). If the technique of reducing County
Board membership outlined in Question Number
One (1) is improper, are you aware of any lawful
method presently permissible under the provisions
of the Illinois Constitution or Statutes by which
the County Board membership can be legally reduced
in number at some time other than the ten (10)
year intervals presently provided by statute?

3). May the County Board amend its 1971
Reapportionment Plan so as to require that the
County Board Chairmen shall be elected by the
voters of the County at the County Board general

election rather than by vote of the membership of the County Board, as such plan presently provides?"

Section 2 and Section 7 of "An Act relating to the composition and election of county boards in certain counties", (Ill. Rev. Stat. 1971, ch. 34, para. 832 and 837), as amended by Public Act 78-869, provide:

"Sec. 2. By July 1, 1971, and each 10 years thereafter, the county board of each county having a population of less than 3,000,000 inhabitants and the township form of government shall reapportion its county so that each member of the county board represents the same number of inhabitants. In reapportioning its county, the county board shall first determine the size of the county board to be elected, which may consist of not less than 5 nor more than 29 members and may not exceed the size of the county board in that county on the effective date of this Act. The county board shall also determine whether board members shall be elected at large from the county or by county board districts.

Sec. 7. Any county board when providing for the reapportionment of its county under this Act may provide that the chairman of the county board shall be elected by the voters of the county rather than by the members of the board. In that event, provision shall be made for the election throughout the county of the chairman of the county board, but no person may be elected to serve as such chairman who has not been elected as a county board member to serve during the same period as the term of office as chairman

of the county board to which he seeks election. Whether the chairman of the county board is elected by the voters of the county or by the members of the board, he shall be elected to a 2 year term, to commence on the first Monday of the month following the month in which members of the county board are elected."

The primary rule in the construction and interpretation of statutes is that the intention of the legislature should be ascertained and given effect. (Certain Taxpayers v. Sheahan, 45 Ill. 2d 75.) The legislative language itself affords the best means of exposition of legislative intent. If the legislative intent can be determined from the language of the statute, it must prevail and be given effect. (Droste v. Kerner, 34 Ill. 2d 495, app. dis., cert. den. 385 U.S. 456.) There is no rule of construction which permits a court to say that the legislature did not mean what the plain language of a statute imports. United Airlines, Inc. v. Mahin, 49 Ill. 2d 45.

Section 2 states that reapportionment shall take place every 10 years. As part of the reapportionment process, the number of county board members and the use of election districts or at large elections for county board members is settled.

Mr. Phillip G. Reinhard -6

Under section 7 of the Act, the county board can provide for an at large election for the county board chairman, but only at the time for reapportionment of the county. Due to the clear language of the Act, it is my opinion that once the various elements of a county board reapportionment plan are adopted, they remain fixed for the ten year life of the plan. As I held in my opinion 5-668, issued November 15, 1973, a county board may not amend its previously adopted apportionment plan until July 1, 1981. I am enclosing a copy of that opinion.

Section 25 of "The Election Code", (Ill. Rev. Stat. 1971, ch. 46, par. 2-26.01), as amended by Public Act 78-892, provides:

"In counties under township organization which have a population of less than 3,000,000 the county board members provided for in 'An Act relating to the composition and election of county boards in certain counties', approved October 2, 1969, as amended, shall be elected on the first Tuesday in April of 1972. One half of the county board members shall be elected every 2 years thereafter, except that in 1982, and every 10 years thereafter, following each decennial Federal census, all county board members shall be elected."

This section is consistent with the proposition that the number of members provided in a county reapportionment plan remains fixed for the 10 year life of the plan. If the General Assembly had intended that county boards could alter the number of county board members during the life of a reapportionment plan, it would have provided a procedure for such alteration.

In addition, I would point out that Article VII, section 3(b) of the 1970 Illinois Constitution provides that no county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum. Under this provision, once a county board has adopted a multi-member district method of electing county board members, it may not change to single member districts without referendum approval. (See Vol. 4, 6th Ill. Const. Con. Debates, pp. 3229-3330 and pp. 3232-3234.)

The formal explanation of the language that became Article VII, section 3(b) of the 1970 Illinois Constitution states:

"The statute referred to earlier (Ill. Rev. Stat. 1969, ch. 34, par. 832) requiring township counties to conform to one-man, one-vote

principles permits the county board to select the plan for districting of the board. The plans offered in the statute include a choice of electing members at large or from single or multi-member districts of equal population. Under paragraph 6.3, any plan adopted by the county boards in township counties which are in effect on the date the new constitution takes effect will be subject to change only pursuant to statute and after approval by county-wide referendum."

Vol. 7, Ill. Const. Con.
Debates, p. 1697.

Although the reduction of the number of county board members to be elected from each multi-member district that you propose in your first question does not clearly fall within the constitutional definition of a change in the method of electing board members, it is possible that such a change would require referendum approval. Since your questions can be answered on non-constitutional grounds, this opinion takes no position on the issue. Rather, it points out an area that the Winnebago County Board might wish to consider at the expiration of the current reapportionment plan.

For the above stated reasons, I must answer your first and third questions in the negative. As to your second question, I am aware of no lawful way in which Winnebago

Mr. Philip G. Reinhard -9

County could amend its 1971 reapportionment plan.

Very truly yours,

A T T O R N E Y G E N E R A L