



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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CONSTITUTION:

**Changes in the Size of and
Methods of Electing County
Boards in Home Rule and Non-
Home Rule Counties**

Honorable Karl Berning
Chairman
Commission to Study County
Problems
1003 State Office Building
Springfield, Illinois 62706

Dear Senator Berning:

I have your letter wherein you ask the following questions:

- (1) Can a non-home rule county change the size of its county board between the dates provided for reapportionment in section 2 of "AN ACT relating to the composition and election of county boards in certain counties"? (Ill. Rev. Stat. 1973, ch. 34, par. 832.)

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(2) Does section 2 apply to home rule counties, and if so could a county which chooses to adopt home rule alter the size of its county board between the statutory reapportionment dates?

(3) Is there a conflict between the requirement of section 2 that county boards determine the size of the board and whether it will be elected at large or by district and the provision of section 3(b) of article VII of the Illinois Constitution of 1970 that requires a referendum for any change in the method of electing county board members?

Section 2 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1973, ch. 34, par. 832) provides that:

"§ 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."

With regard to your first question, I call your attention to my opinion No. S-680 (1974 Ill. Att'y. Gen. Op. 53) wherein I specifically dealt with this issue. In

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that instance the county board of a non-home rule county requested an opinion as to whether it could amend its 1971 reapportionment plan so as to reduce the size of its county board before 1981. After due consideration of the statutory language quoted above, I advised that such a course of action was not permissible. Section 2 provides that reapportionment shall take place every ten years and that as part of the reapportionment process, the number of county board members is to be determined. Once the reapportionment plan is adopted and the size of the county board determined, the Act clearly requires that they remain fixed for the ten year period.

The conclusion I reached in that earlier opinion with regard to the size of the county board was not affected by the decision of the Illinois Supreme Court in Taylor v. County of St. Clair, 57 Ill. 2d 367, handed down later in that year. The primary issue there was the application of section 7 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1973, ch. 34, par. 837), which at that time read in pertinent part as follows:

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"§ 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. * * *"

The St. Clair County Board had determined at the time it submitted its decennial reapportionment plan in 1971 to continue to appoint the chairman of the county board itself. In November of 1972, however, the voters of the county passed a referendum calling for the election of the chairman by the voters at large.

One of the arguments raised by the plaintiff in the Taylor case was that the decision of the county board to appoint its chairman, made pursuant to section 7 of "AN ACT relating to the composition and election of county boards in certain counties" was binding for the ten year period provided for in section 2 of the Act. The Supreme Court at page 374 rejected this argument, however, on the ground that it was "in direct contradiction to the intent of section 4(c) of article VII [of the Illinois Constitution of 1970] permitting

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various methods of * * * modifying the terms of office or manner of selection".

The situation you present, however, involves neither section 7 of "AN ACT relating to the composition and election of county boards in certain counties" nor section 4(c) of article VII of the Illinois Constitution of 1970. The constitutional provision which does apply is section 3(a) of article VII of the Illinois Constitution of 1970 which provides:

"(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law."

The unmistakable meaning of this section is that the number of members of the county board is to be determined by the board itself within the limits provided by the legislature. In this regard it is equally apparent that section 2 of "AN ACT relating to the composition and election of county boards in certain counties" is the sort of limiting

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statute contemplated in section 3(a) of article VII. Indeed the local government committee in its majority proposal stated unequivocally that section 2 "conforms exactly" to the requirements set forth in what is now section 3(a) of article VII. VII Record of Proceedings 1567.

It is therefore my opinion that that portion of section 2 of "AN ACT relating to the composition and election of county boards in certain counties" dealing with the size of a county board continues to be valid under the Illinois Constitution of 1970 and as a result, a non-home rule county may not change the size of its county board except in accordance with the decennial reapportionment scheme outlined in section 2.

You next ask whether section 2 applies to home rule counties and if so, whether a county which adopts home rule can alter the size of its county board between the required reapportionment dates.

Section 2 provides in part that the Act shall apply to "each county having a population of less than

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3,000,000 inhabitants and the township form of government".

(emphasis added.) In order to deal with the question you pose, it is first necessary to determine whether a county which adopts the County Executive Act (Ill. Rev. Stat. 1973, ch. 34, pars. 701 et seq.) in order to become a home rule unit still has a "township form of government" for purposes of section 2.

The purpose behind the requirement of section 2 that the county have a township form of government is simply to exclude those counties governed by a board of commissioners as provided for by sections 42 et seq. of "AN ACT to revise the law in relation to counties". (Ill. Rev. Stat. 1973, ch. 34, pars. 801 et seq.) "Form of government" as used in section 2 was thus used to distinguish counties according to the nature of their governing legislative body and this distinction continues to be a valid one even after the County Executive Act has been adopted. Nowhere in that Act is there a provision regulating the form of the legislative governing body of a county which chooses to elect a chief executive officer. In this respect, it should be noted that section 3(a) of the Act (Ill. Rev. Stat.

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1973, ch. 34, par. 703(a)) states that:

"(a) 'County board' or 'board' means the governing body of any county other than Cook County which has adopted the county executive form of government under this Act."

By using the general term "governing body" the General Assembly provided for both township county boards and boards of commissioners with the clear implication being that both could continue to exist and function within the parameters of the County Executive Act.

The next issue to be resolved is whether there exists anything in the Illinois Constitution of 1970 which would exempt home rule counties from the restrictions on the power of a county board to alter its size contained in section 2 of "AN ACT relating to the composition and election of county boards in certain counties". Section 3(a) of article VII of the Illinois Constitution of 1970, as noted above, provides:

"(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within the limitations provided by law."

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Nothing in the language of this provision indicates that any exception is to be made for home rule counties. Rather it is evident that county boards of home rule and non-home rule counties alike are to be bounded by the limitations provided by law on the power to determine the size of the county board. Likewise, there is nothing in section 6 of article VII of the Illinois Constitution of 1970, which deals specifically with the powers of home rule units, to indicate that any exception was intended.

It is therefore my opinion that section 2 of "AN ACT relating to the composition and election of county boards in certain counties" applies to home rule counties and as a result the county board of a home rule county may not alter the size of the board between the statutory reapportionment dates.

Your final question is whether a conflict exists between the requirement of section 2 that a county board determine the size of the board and whether its members are to be elected at large or by district and the provision of

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section 3(b) of article VII of the Illinois Constitution of 1970 which states:

"(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum."

With regard to the matter of the size of the county board, I have already stated that section 3(a) of article VII of the Illinois Constitution of 1970 is dispositive. Section 3(b) of article VII does not refer to the question of size and it, therefore, does not conflict with the provision in section 2 of "AN ACT relating to the composition and election of county boards in certain counties" regulating the size of county boards.

The statutory requirement that the county board determine whether or not the board is to be elected at large or by district is at odds, however, with the constitutional command that no county may change its method of electing its county board except by referendum. The transcripts of the Constitutional Convention and the majority proposal of the local government committee leave no doubt that the phrase

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"method of electing" in section 3(b) of article VII of the Illinois Constitution of 1970 was meant to include the choice between electing county board members at large or by district.

Section 3(b) of article VII as originally proposed by the local government committee was designated section 6.3 and provided in pertinent part:

"6.3 The General Assembly shall provide plans for the election of county board members, * * * but plans of election shall not be changed unless approved by county-wide referendum." (VII Record of Proceedings 1696.)

In explaining section 6.3 to the Convention, Delegate Anderson of the local government committee stated:

"* * * [W]hen we talk about a plan of election, it's basically whether you are going to change from a single-member district to a multimember district or go from at large to a single-member district. * * *" (IV Record of Proceedings, 3233-3234.)

Even more illuminating is the following excerpt from the text of the majority proposal of the local government committee expressly dealing with the relationship of "AN ACT relating to the composition and election of county boards in certain counties" and section 6.3 (now section 3(b)) of article VII:

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"The statute referred to earlier [Ill. Rev. Stat. 1973, 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." (emphasis added.) (VII Record of Proceedings 1697.)

It is therefore my opinion that section 2 of "AN ACT relating to the composition and election of county boards in certain counties" does conflict with that portion of section 3(b) of article VII of the Illinois Constitution of 1970 which provides that no county may change its method of electing county board members except by referendum. The existence of this conflict requires the addition of a caveat to my answers to your first two questions.

Section 11(b) of article VII of the Illinois Constitution of 1970 states in part that:

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"(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. * * *"

Section 28-4 of The Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 28-4) provides in relevant part:

"§ 28-4. In any case in which Article VII or paragraph (a) of Section 5 of the Transition Schedule of the Constitution authorizes any action to be taken by or with respect to any unit of local government, * * * by or subject to approval by referendum, any such referendum shall be initiated and held in accordance with this Section.

The governing body of the unit of local government may by resolution and shall, upon the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors equal to or greater than 10% of the number who voted in the last general election in the governmental unit and who request such a referendum, provide for the submission of the proposal for such action to the voters of the governmental unit at a general, regular or special election, but in no event later than the first general or regular election occurring at least 78 days after the adoption of such resolution or the filing of such petition, as the case may be."

It is clear from these provisions that the referenda discussed in section 3(b) of article VII may be held between the decennial reapportionment dates set forth in section 2 of "AN ACT relating to the composition and election of county boards in certain counties". The problem that arises is that

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in certain instances a change in the method of electing county board members would also require a change in the number of county board members. If, for example, the voters in a county with 29 board members elected from single member districts decided to change to multi-member districts, the number of board members would have to be reduced to conform to the one man one vote requirements of section 2. In such a situation, conformity to the Constitution would seem to require a departure from the normal decennial rule set out in section 2. It is my opinion, however, that the decennial plan provided in section 2 continues to remain binding in all but such exceptional circumstances.

Very truly yours,

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