



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

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FILE NO. 97-019

MUNICIPALITIES:  
Redistricting

Honorable Michael J. Waller  
State's Attorney, Lake County  
18 North County Street  
Waukegan, Illinois 60085-4363.

Dear Mr. Waller:

I have your letter wherein you inquire regarding the status of incumbent aldermen following the redistricting of a city which does not result in any increase or decrease in the number of aldermen to be elected. For the reasons hereinafter stated, it is my opinion that those aldermen whose terms of office do not expire when the new ward divisions go into effect will continue in office, representing the new wards in which they reside or serving as aldermen-at-large, as the case may be.

According to the information that you have supplied, a municipality in Lake County has determined that it is necessary, due to shifts of population within its boundaries, to redistrict to comply with one man - one vote principles. As you correctly note, the pertinent statutes expressly address redistricting in

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order to increase or decrease the number of wards because of increases or decreases in population, but do not specify procedures for redistricting where no change in the number of wards will result. Your primary concern is what status incumbent aldermen will have following the redistricting.

Section 3.1-20-10 of the Municipal Code (65 ILCS 5/3.1-20-10 (West 1996)) prescribes the number of aldermen that cities of differing populations are authorized to elect. Section 3.1-20-15 of the Municipal Code (65 ILCS 5/3.1-20-15 (West 1996)) provides:

"Division into wards. Except as otherwise provided in Section 3.1-20-20, every city shall have one-half as many wards as the total number of aldermen to which the city is entitled. The city council, from time to time, shall divide the city into that number of wards." (Emphasis added.)

Section 3.1-20-20 (65 ILCS 5/3.1-20-20 (West 1996)), which is referred to in both sections 3.1-20-10 and 3.1-20-15, permits smaller cities, by referendum, to reduce the number of aldermen to one-half the total authorized, and thus has no bearing upon the circumstances you have described.

Section 3.1-20-15 is descended from section 51 of "AN ACT to provide for the incorporation of cities and villages" (see Ill. Rev. Stat. 1874, ch. 24, par. 51), which provided, in pertinent part:

"§4. The city council of any city in this State, whether organized under

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this act or under any special law of this State, may, from time to time, divide the city into one half as many wards as the total number of aldermen to which the city is entitled; and one alderman shall, annually, be elected in and for each ward, to hold his office for two years, and until his successor is elected and qualified. In the formation of wards the population of each shall be as nearly equal, and the ward shall be of as compact and contiguous territory, as practicable." (Emphasis added.)

This provision was held to authorize a city council to redistrict the city whenever, in its sound discretion, it had sufficient reason to do so. (People ex rel. Stansbury v. City of Danville (1893), 147 Ill. 127.) Indeed, as is the situation here, the reason for redistricting cited in People ex rel. Stansbury v. City of Danville was to redraw wards of more nearly equal population. Therefore, based upon the nearly identical wording of the earlier section and its previous interpretation, it must be concluded that the city in question has the authority to redistrict for these purposes pursuant to section 3.1-20-15 of the Municipal Code.

Section 3.1-20-25 of the Municipal Code (65 ILCS 5/3.1-20-25 (West 1996)), provides:

"Redistricting a city.

(a) In the formation of wards, the number of inhabitants of the city immediately preceding the division of the city into wards shall be as nearly equal in population, and the wards shall be of as compact and contiguous

territory, as practicable. [sic] Wards shall be created in a manner so that, as far as practicable, no precinct shall be divided between 2 or more wards.

(b) Whenever an official census shows that a city contains more or fewer wards than it is entitled to, the city council of the city, by ordinance, shall redistrict the city into as many wards as the city is entitled. This redistricting shall be completed not less than 30 days before the first day set by the general election law for the filing of candidate petitions for the next succeeding election for city officers. At this election there shall be elected the number of aldermen to which the city is entitled, except as provided in subsection (c).

(c) If it appears from any official census that a city has the requisite number of inhabitants to authorize it to increase the number of aldermen, the city council shall immediately proceed to redistrict the city and shall hold the next city election in accordance with the new redistricting. At this election the aldermen whose terms of office are not expiring shall be considered aldermen for the new wards respectively in which their residences are situated. If there are 2 or more aldermen with terms of office not expiring and residing in the same ward under the new redistricting, the alderman who holds over for that ward shall be determined by lot in the presence of the city council, in the manner directed by the council, and all other aldermen shall fill their unexpired terms as aldermen-at-large. The aldermen-at-large, if any, shall have the same powers and duties as all other aldermen, but upon the expiration of their terms the offices of aldermen-at-large shall be abolished.

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(d) If the redistricting results in one or more wards in which no aldermen reside whose terms of office have not expired, 2 aldermen shall be elected in accordance with Section 3.1-20-35, unless the city elected only one alderman per ward pursuant to a referendum under subsection (a) of Section 3.1-20-20.

(e) A redistricting ordinance that has decreased the number of wards of a city because of a decrease in population of the city shall not be effective if, not less than 60 days before the time fixed for the next succeeding general municipal election, an official census is officially published that shows that the city has regained a population that entitles it to the number of wards that it had just before the passage of the last redistricting ordinance."

The clear intention of subsection 3.1-20-25(a) is to require that a city be divided into wards as nearly equal in population, and as compact and contiguous, as is practicable. Subsections 3.1-20-25(b), (c) and (e), by their terms, are applicable only when the number of wards is increased or decreased, while subsection 3.1-20-25(d) provides for the means for selecting aldermen when the redistricting results in a ward in which no alderman resides. No reported case has construed those portions of section 3.1-20-25 relating to the residence or selection of aldermen following redistricting.

As previously noted, People ex rel. Stansbury v. City of Danville (1893), 147 Ill. 127, concerned circumstances virtually identical to those which you have described, as well as

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statutory provisions which, in spite of intervening reorganization and recodification, have changed little in substance. (See Ill. Rev. Stat. 1908, ch. 24, par. 48 et seq.) Then, as now, the only provision relating to the effect of redistricting upon aldermen whose terms had not expired referred to circumstances in which the number of aldermen was increased. Although the status of such officers was not at issue in the case, the recitation of facts by the court indicates that those aldermen whose terms did not expire had held over to represent the new wards in which they resided. (People ex rel. Stansbury v. City of Danville (1893), 147 Ill. 127, 129, 134-35.) The court did not question the procedure.

Clearly, a city may redistrict even when no change in the number of wards will result. Further, because aldermen are generally elected to staggered terms (see 65 ILCS 5/3.1-20-35 (West 1996)), there will ordinarily be aldermen whose terms of office do not expire upon the implementation of any redistricting plan. No statutory provision purports to permit an incumbent's term of office to be cut short by redistricting, and, indeed, such a statute would potentially be subject to constitutional challenge. See Tully v. Edgar (1996), 171 Ill. 2d 297, 307, 308.

The few reported cases from other jurisdictions are not helpful because they tend to be specific with respect to their facts and the applicable statutes. In State ex rel. Wood v. Bosset (1913), 85 NJL 113, 88 A. 853, it was held that, after the

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division of his ward into two wards, an incumbent city council member continued to represent his old ward until the end of his term, thus delaying the effective date of the redistricting. In Summit Hill Borough (1913), 240 Pa. 396, 87 A. 857 and in Cotteral v. Barker (1912), 34 Okla. 533, 126 P. 211, it was held that municipal redistricting into fewer wards resulted in the ouster of all incumbent officers upon the ordering of elections in the new wards. Neither the facts nor the statutory provisions in any of these cases appear to be similar to those now under consideration, and thus no analogy to Illinois law may be drawn therefrom.

In the absence of clear statutory direction, there are three alternative interpretations to be considered: firstly, redistricting may be deemed to result in all terms of office of aldermen ending, or all such offices becoming vacant; secondly, incumbent aldermen could continue in office representing their old wards until their terms end; or thirdly, incumbent aldermen could continue in office, representing the new wards in which they reside, as is provided in subsection 3.1-20-25(c) of the Municipal Code in the case of an increase in the number of wards.

As previously noted, the first alternative potentially runs afoul of the protected constitutional right to vote, and hence will be excluded from further consideration. With respect to the second alternative, the continuance of incumbents in their old wards would delay the implementation of the redistricting

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scheme, contrary to the public policy behind redistricting, and would also create uncertainty over the continuing status of the aldermen elected at the first election following the redistricting. The third alternative, allowing those aldermen whose terms do not expire to continue in office representing the new wards in which they reside, or as aldermen-at-large, provides the most practical result. That is the procedure prescribed with respect to redistricting to increase the number of wards, and is also the procedure that appears to have been followed in the only reported Illinois case in which the matter has been touched upon.

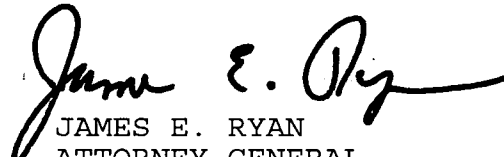
It is well established that statutes are to be given the most rational and sensible interpretation possible. (People v. Brown (1983), 118 Ill. App. 3d 609, 611.) It is my opinion, therefore, that when a municipality is redistricted with no increase or decrease in the number of wards, the procedures provided in subsections 3.1-20-25(c) and (d) of the Municipal Code should be followed. Consequently, in such cases, incumbent aldermen will continue to serve representing the new wards in which they reside until their current term of office expires. If more than one alderman resides in a redrawn ward, one should be



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determined by lot to represent the ward and all others will serve  
as aldermen-at-large for the duration of their terms.

Sincerely,

  
JAMES E. RYAN  
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