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OFFICERS:
Manner of Selecting County
Superintendent of Highways

Honorable David W. Lewis
Clark County State's Attorney
Clark County Courthouse
Marshall, Illinois 62441

Dear Mr. Lewis:

I have your letter wherein you ask several questions regarding changing the offices of county superintendent of highways and supervisor of assessments from appointive positions to elective positions. You first inquire whether the manner of selecting the county superintendent of highways may be changed to an elective position pursuant to article VII, section 4(c) of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, § 4(c)). For the reasons hereinafter stated,

it is my opinion that the manner of selecting the county superintendent of highways may be changed by county-wide referendum.

Through the provisions of the Illinois Highway Code (Ill. Rev. Stat. 1983, ch. 121, par. 1-101 et seq.), the General Assembly created the office of county superintendent of highways as an office filled by appointment of the county board. (See sections 5-101 and 5-101.6 of the Illinois Highway Code (Ill. Rev. Stat. 1983, ch. 121, pars. 5-101 and 5-101.6).) The appointment process is described in section 5-201 of the Illinois Highway Code (Ill. Rev. Stat. 1983, ch. 121, par. 5-201), which provides as follows:

"In each county there shall be a county superintendent of highways.

In the appointment of a county superintendent of highways, the county board and the Department [of Transportation] shall proceed as follows:

1. Should the board desire to reappoint the incumbent, it shall do so within 100 days before or after his term of office expires; however, prior to each reappointment, the board shall request and receive the consent of the Department to such reappointment, and the Department shall not withhold such consent except for incompetence or neglect of duty; or,

2. Should the board desire to appoint someone other than the incumbent, it shall, within 100 days before or after the incumbent's term expires or a vacancy occurs, submit to the Department a list of not more than 5 persons, residents of the State, who are candidates for the office. Each candidate shall hold a currently valid certificate of registration as a registered professional engineer issued under the

provisions of 'The Illinois Professional Engineering Act', approved July 20, 1945, as heretofore and hereafter amended, except that any candidate who, on the effective date of this amendatory Act of 1979, holds the office of county superintendent of highways in any county, shall not be required to hold such certificate. Each candidate shall also have at least one of the following qualifications: (a) have a baccalaureate degree in engineering from a reputable school and at least 2 years experience in civil and highway engineering or in the construction and maintenance of streets or highways, or both; or (b) have had at least 10 years practical experience in civil and highway engineering or in the construction and maintenance of streets or highways, or both, at least 2 years of which shall be administrative experience of a scope comparable to that of the office for which he is a candidate, however, each of the first 3 academic years attendance at a reputable engineering school shall be considered as equivalent to 2 years practical experience in civil and highway engineering or experience in the construction and maintenance of streets or highways. Upon the submission of a list of candidates by a county board, the Department shall proceed to determine if each candidate meets either of the above qualifications. The Department shall thereupon hold an appropriate examination for the candidate or candidates which it has found to meet one of the qualifications, and shall certify to the county board the name or names of the candidate or candidates who made satisfactory grades in the examination. The County board shall then appoint as county superintendent of highways one of the candidates so certified by the Department. If no candidate makes a satisfactory grade, the Department shall so certify to the county board, and the county board and Department shall proceed in like manner until an appointment is made; or,

3. Should the board desire to consider for appointment both the incumbent and other candidates, the procedure shall be as above outlined in this Section except that final action of the county board on the question of reappointing the incumbent shall be delayed until the county board

receives the first certification of results of the examination from the Department. In case no candidate on the first list submitted by the county board made a satisfactory grade in the examination, the county board shall not submit a second list but shall proceed to reappoint the incumbent.

As between persons equally competent and qualified to hold the office of county superintendent of highways, preference in the appointment shall be given residents of the county.

Any 2 or more counties may, with the approval of the Department, appoint the same person as county superintendent of highways for each of such counties and may by agreement provide for the proportionate share of the salary and expenses of such appointee to be borne by each county. However, if a county board desires to appoint as county superintendent of highways of that county a person who at that time is the county superintendent of highways of another county, such person shall not be required to take the examination given by the Department and shall not be required to accept such appointment without his consent.

No part of any moneys appropriated by the State for the building and maintaining of county highways shall be apportioned to any county unless a county superintendent of highways has been appointed." (Emphasis added.)

As established by the General Assembly, the county superintendent of highways is selected by the county board from a group of individuals found to possess the statutory qualifications by the Department of Transportation. Section 4(c) of article VII of the 1970 Illinois Constitution, however, authorizes the conversion of appointive positions into elective positions:

"* * * Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum.
* * * (Emphasis added.)

Pursuant to section 4(c) of article VII of the 1970 Illinois Constitution, the term of any county office and the manner of selection therefor may be modified by county-wide referendum, irrespective of whether the office is a constitutional office or one that is created by the General Assembly. Taylor v. County of St. Clair (1974), 57 Ill. 2d 367, 374.

In the case of In re Objection of Cook (1984), 122 Ill. App. 3d 1068, the supervisor of assessments of Shelby County brought suit to challenge the constitutionality of a petition for a referendum to make the office of supervisor of assessments elective instead of appointive. The supervisor contended that the office was created by the General Assembly rather than the Constitution, and, as such, the office of supervisor of assessments was not subject to section 4(c) of article VII. The court rejected the supervisor's contention holding that the Constitution expressly allows county voters to change the manner of selection of county offices created by the General Assembly as well as those created by the Constitution. (In re Objection of Cook (1984), 122 Ill. App. 3d 1068, 1071.) Therefore, it is my opinion that the manner of selection of the county superintendent of highways may be changed from an

appointive office to an elective office by county-wide referendum.

You next ask whether the county board may initiate such a referendum by resolution. Section 11 of article VII of the 1970 Illinois Constitution (Ill. Const. 1970, art. VII, § 11) provides as follows:

"(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article. (Emphasis added.)

The aforementioned constitutional provision is implemented by section 28-7 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 28-7), which provides in pertinent part as follows:

"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, as defined in Section 1 of Article VII of the Constitution, by or subject to approval by referendum, any such public question shall be initiated in accordance with this Section.

Any such public question may be initiated by the governing body of the unit of local government by resolution * * *.

* * *

This Section is intended to provide a method of submission to referendum in all cases of proposals for actions which are authorized by Article VII of the Constitution by or subject to approval by referendum and supersedes any conflicting statutory provisions except those contained in the 'County Executive Act'.

* * *

(Emphasis added.)

The above two provisions clearly apply to all referenda held pursuant to section 4(c) of article VII of the 1970 Illinois Constitution. Since the county board is the governing body of the county (Ill. Rev. Stat. 1983, ch. 34, par. 302), it is my opinion that the county board may initiate a referendum to change the office of superintendent of highways from an appointive position to an elective position. Furthermore, pursuant to section 11(b) of article VII of the 1970 Illinois Constitution, the question submitted at the referendum is adopted if it is approved by a simple majority of those voting on the question.

You have also asked whether candidates for the elective offices of county superintendent of highways and supervisor of assessments must meet the statutory qualifications for such offices. For the reasons hereinafter stated, it is my opinion that to be eligible for such offices, persons seeking the offices must possess all statutory qualifications appertaining thereto, regardless of whether the position is appointive or elective.

As noted above, section 5-201 of the Illinois Highway Code requires that each candidate for the office of county superintendent of highways be a resident of the State of Illinois and hold a currently valid certificate of registration as a registered professional engineer. Also, the candidate must have a baccalaureate degree in engineering from a reputable school together with two years experience in the field. In lieu of the baccalaureate degree, a candidate must have at least ten years practical experience in civil and highway engineering or in the construction and maintenance of streets and highways, at least two years of which shall be administrative experience. If the Department of Transportation determines that the candidate possesses the above qualifications, the candidate must then satisfactorily pass an examination administered by the Department.

Similarly, section 3a of the Revenue Act of 1939 (Ill. Rev. Stat. 1983, ch. 120, par. 484a) stipulates the requisite qualifications for a candidate to be eligible for the office of supervisor of assessments:

"In counties containing less than 1,000,000 inhabitants and not having an elected board of assessors, the office of supervisor of assessments shall be filled by appointment by the presiding officer of the county board with the advice and consent of the county board, as herein provided.

To be eligible for appointment a person must have had at least 2 years' experience in the

field of real estate sales, assessments, finance or appraisals and must have passed an examination conducted by the Department [of Revenue] to determine his competence to hold such office.

The examination may be conducted by the Department at some convenient location in the county or on a regional basis. The Department shall certify to the county board a list of the persons who passed the examination indicating the grade scored by each such person. Appointment shall be made of one of the 3 persons attaining the highest grades in the examination. Notice of the time and place of the examination shall be given by publication, in a newspaper of general circulation in the counties, at least one week prior to the examination. The term of office shall be 4 years from the date of appointment and until a successor is appointed and qualified. * * *

* * *

Reappointment of an incumbent supervisor of assessments may be made without examination. If the presiding officer of the county board does not intend to reappoint an incumbent, he shall so notify him not more than 120 nor less than 90 days before the expiration of his term. Upon request of the incumbent, the county board shall grant him a public hearing on the question of why he is not to be reappointed.

Each county appointing a supervisor of assessments under the provisions of this Act may levy an annual tax at not to exceed a rate of .02% of the value, as equalized or assessed by the Department of all the taxable property in the county for the purposes of helping to pay for the expenses of the office.

This tax shall not be included within any statutory limitation of rate or amount for other county purposes, but shall be excluded therefrom and be in addition thereto and in excess thereof." (Emphasis added.)

It is a general proposition of law that, when an office is created by statute, the General Assembly has the

power to specify the qualifications required to hold such office. (People ex rel. Ryan v. Coles (1978), 64 Ill. App. 3d 807, 813-14.) See also Murphy v. Schilling (Ind. S. Ct. 1979), 389 N.E.2d 314, 316; Paey v. Rodrique (N.H. S. Ct. 1979), 400 A.2d 51, 53; Redmond v. Carter (Ia. S. Ct. 1977), 247 N.W.2d 268, 271; Humane Society of the United States, New Jersey Branch, Inc. v. New Jersey State Fish & Game (N.J. S. Ct. 1976), 362 A.2d 20, 25.

In Alongi v. Schatzman (N.J. S. Ct. 1971), 274 A.2d 33, the court considered the validity of statutory qualifications for the elective office of tax assessor. Under New Jersey law, candidates for the office were required to satisfactorily pass an examination conducted by the New Jersey Division of Taxation. The examination was open only to those who were graduates of a four year course at college or who had full-time experience in real estate appraisal or in property tax assessment. Because one candidate for the office lacked such qualifications, the trial court ordered that his name be removed from the ballot. The prescribed qualifications were challenged as being arbitrary and as having no reasonable relationship to the duties of the office of tax assessor. The court upheld the qualifications stating as follows:

* * *

* * * [S]ince the office of assessor was created by the Legislature rather than by the Constitution, the Legislature may enact such

requirements for the office as are reasonable. [Citation.] * * * Of course, in deciding whether a qualification for elective office is reasonable, we must take into account that the power to prescribe qualifications is limited by the constitutional right to vote--a right which could be meaningless if the list of candidates was restricted to persons possessing qualifications bearing no rational relationship to the office. However, the right to hold office is not coextensive with the right to vote. [Citation.] The Legislature may prescribe qualifications which reasonably relate to the needs of office-holding * * * or to prescribe qualifications which reasonably relate to the specialized demands of an office. * * *

There is no dispute that the office of municipal tax assessor involves specialized demands. The task of assessing property has become increasingly complicated. Moreover, proper assessment techniques are extremely important since local property taxes are the key source of revenue in municipal and county finance. It is crucial that persons competent to meet the demands of the office serve as assessors, and it is to this end that the attacked legislation was obviously directed.
* * *

* * *

We are not here confronted with a statute setting qualifications for an elective office which primarily involves policy making in furtherance of the needs of a constituency. An assessor is solely concerned with making certain that the properties within his municipality are correctly assessed. His duties are in principle not unlike those of a municipal attorney or engineer. Surely no one would contend that educational requirements for those offices are unreasonable even were they elective. * * * [W]e think the Legislature could properly find that the broad exposure to learning given by a general college education is reasonably related to a proper fulfillment of an assessor's duties. * * *

* * *

(Emphasis added.) (Alongi v. Schatzman (N.J. S. Ct. 1971), 274 A.2d 33, 39-40.)

See also Shear v. County Board of Commissioners (Neb. S. Ct. 1972), 195 N.W.2d 151.

The office of county superintendent of highways and the office of supervisor of assessments were not established by the Constitution; both offices were statutorily created prior to the effective date of the 1970 Illinois Constitution. See "AN ACT to revise the law in relation to roads and bridges" (Ill. Rev. Stat. 1913, ch. 121, par. 8), which created the office of county superintendent of highways, and "AN ACT to revise the law in relation to the assessment of property etc." (Ill. Rev. Stat. 1939, ch. 120, par. 483), which created the office of supervisor of assessments. As established by the General Assembly, both offices involve specialized demands, duties, and techniques. In order to meet such demands and duties and employ such techniques, the General Assembly has prescribed qualifications that persons must possess in order to be eligible for the offices so as to assure that competent persons serve in the offices. Although the manner of selecting the officeholders may be changed, section 4(c) of article VII of the 1970 Illinois Constitution does not authorize the electorate to modify the statutory qualifications of the county superintendent of highways or the supervisor of assessments. The Constitution merely confers upon the electorate the power to change the term of an office and the manner of selecting the

officeholder. (See In re Objection of Cook (1984), 122 Ill. App. 3d 1068, 1071, wherein the court noted that the General Assembly designed the office of supervisor of assessments in the manner it found fit; see also Taylor v. County of St. Clair (1974), 57 Ill. 2d 367, 374.) Absent a statutory or constitutional provision authorizing the electorate to modify the qualifications for an office created by statute, the prerequisites established by the General Assembly are not and cannot be altered by a county-wide referendum changing the manner of selection. Accordingly, it is my opinion that to be eligible for either the office of county superintendent of highways or the office of supervisor of assessments, candidates for such offices must meet all statutory requirements and qualifications appertaining to the particular office, irrespective of whether the office is appointive or elective.

You next inquire whether the State may deprive counties which elect, rather than appoint, the county superintendent of highways or the supervisor of assessments of certain State moneys. In the case of the county superintendent of highways, you specifically refer to moneys appropriated by the State for the building and maintaining of county highways, and in the case of the supervisor of assessments you refer to the 50 percent State reimbursement to the county for the salary of the supervisor of assessments. For the reasons hereinafter

stated, it is my opinion that any county which elects either or both the county superintendent of highways and the supervisor of assessments is eligible for the aforesaid State assistance so long as the officeholders possess all statutory qualifications. The State may not deprive a county of the State assistance solely on the basis that the county superintendent of highways and the supervisor of assessments are elected.

As noted above, section 5-201 of the Illinois Highway Code (Ill. Rev. Stat. 1983, ch. 121, par. 5-201) imposes certain educational and/or experiential qualifications upon all candidates for the position, and the statute concludes as follows:

" * * *

No part of any moneys appropriated by the State for the building and maintaining of county highways shall be apportioned to any county unless a county superintendent of highways has been appointed." (Emphasis added.)

Concerning the supervisor of assessments, section 3b of the Revenue Act of 1939 (Ill. Rev. Stat. 1983, ch. 120, par. 484b) provides as follows:

"Any person appointed pursuant to Section 3a [of the Revenue Act of 1939] shall hold no other lucrative public office or public employment and shall receive annual compensation in an amount fixed by the county board * * *.

* * *

* * * The State of Illinois shall reimburse each county monthly from the State treasury, 50%

of the amount of salary the county paid to such officer for the preceding month. * * *

* * *

(Emphasis added.)

The cardinal rule of statutory construction is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly. (People v. McCoy (1976), 63 Ill. 2d 40, 44-45.) The words employed in a statute ordinarily are given their plain and commonly accepted meaning, but where strict adherence to the letter of a statute would result in an absurdity, a literal construction is to be avoided. (People ex rel. Barrett v. Thillens (1948), 400 Ill. 224, 231; Balmes v. Hiab-Foco, A.B. (1982), 105 Ill. App. 3d 572, 574.) As stated by the Illinois Supreme Court:

* * *

Where the spirit and the intent of the General Assembly in adopting an act are clearly expressed and its objects and purposes are clearly set forth, courts are not bound by the literal language of a particular clause which would defeat the obvious intent of the legislature. Where verbal inconsistency appears, incongruous words may be modified, changed or rejected in order to arrive at a construction conforming to the otherwise clear legislative intention. * * *

* * *

(Emphasis added.) Continental Illinois National Bank & Trust Co. of Chicago v. The Illinois State Toll Highway Commission (1969), 42 Ill. 2d 385, 395.

As indicated above, both the county superintendent of highways and the supervisor of assessments were created by the

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General Assembly prior to the effective date of the 1970 Illinois Constitution. Even though the statutes establishing the offices have been amended since the effective date of the 1970 Illinois Constitution, the General Assembly has never taken statutory cognizance of section 4(c) of article VII of the 1970 Illinois Constitution, which enables the electorate to change the manner of selecting county officers. If the above statutes were construed to mean that only counties with appointed officeholders were eligible for the State contributions, an absurdity would result. The key to eligibility for the State assistance is not that the officeholders are appointed but that qualified persons hold the offices. Therefore, it is my opinion that so long as a county has officeholders who possess all statutory prerequisites for the offices of county superintendent of highways and supervisor of assessments, the county is eligible to receive the State assistance appertaining to such offices, and that the State agencies in question may not withhold the aforesaid assistance merely because the county superintendent of highways and the supervisor of assessments are elected.

Very truly yours,


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