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SPRINGFIELD

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FILE NO. S-1127

COUNTIES:
Change in Mode of
Selection of Recorder
of Deeds

Honorable James M. Carr
State's Attorney of DeKalb County
DeKalb County Court House
Sycamore, Illinois 60178

Dear Mr. Carr:

This is in response to your letter concerning the office of recorder of deeds of DeKalb County. You ask three questions:

1. Must DeKalb County have a separate office of Recorder of Deeds?
2. In the event that the answer to question No. 1 is in the affirmative, must the Recorder of Deeds be elected or may he be appointed by the County Board?
3. In the event that appointment is authorized, may the County Clerk be appointed Recorder of Deeds and carry on the functions of that office?"

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It is my understanding that heretofore, the functions of a recorder have been carried out by the DeKalb County clerk under the provisions of section 1 of "AN ACT to revise the law in relation to recorders" (Ill. Rev. Stat. 1975, ch. 115, par. 1) which provides that in counties of less than 60,000 population the county clerk shall be the recorder of deeds. However, DeKalb County's population now exceeds 60,000, and there has been no county-wide referendum affecting the recorder within the contemplation of section 4(c) of article VII of the Illinois Constitution of 1970.

It is my opinion that, absent the referendum hereinafter discussed, DeKalb County must provide a separate office of recorder of deeds apart from the office of county clerk and that such recorder of deeds must be elected rather than appointed by the county board. However, in the event that a proper referendum is approved by the electors, the same officer may be authorized to have the powers and duties of both the county clerk and recorder.

With regard to your first question, and ignoring, for the moment, the potential effect of a referendum, the first sentence of section 4(c) of article VII of the Illinois Constitu-

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tion of 1970 provides:

"Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance."

The General Assembly has, in fact, provided "by law" for the office of recorder of deeds. Section 1 of "AN ACT to revise the law in relation to recorders" provides:

"§ 1. The county clerk in counties having a population of less than 60,000 inhabitants shall be the recorder of deeds in his county.

In counties having a population of 60,000 or more inhabitants, there shall be elected a recorder of deeds, as provided by law, who shall hold his office until his successor is qualified."

In addition, section 2-21 of The Election Code (Ill. Rev. Stat. 1975, ch. 46, par. 2-21) provides:

"§ 2-21. In counties having a population of sixty thousand or more, there shall be elected a recorder of deeds, on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every four years thereafter."

For the reasons that DeKalb County now has a population in excess of 60,000 and that there has been no county-wide referendum to date concerning the office of recorder of deeds, I am of the opinion that DeKalb County must provide for a separate office of recorder of deeds.

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Since a separate office of recorder of deeds must now be provided for DeKalb County, a response to your second question is necessary. Section 9 of the Transition Schedule of the Illinois Constitution of 1970 provides as follows:

"The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto."

Since the office of recorder of deeds was an elected office at the adoption of the Illinois Constitution of 1970 (Ill. Rev. Stat. 1969, ch. 115, par. 1), it would remain so until abolished or altered to become an appointive office, pursuant to the 1970 Constitution. I therefore conclude that since there has been no county-wide referendum to alter the mode of selection of recorder of deeds for DeKalb County and since the population of DeKalb County is in excess of 60,000, section 1 of "AN ACT to revise the law in relation to recorders"

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requires that the recorder be elected and not appointed.

With regard to your third question, while appointment is not now authorized, it could be under sections 4(c) and (d) of article VII of the Constitution which provide as follows:

"(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance."

In addition, section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) provides:

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"§ 25.34. No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance."

In accordance with these constitutional and statutory provisions the manner of selection of the recorder or clerk may be changed by referendum from election to appointment; the office of recorder or clerk may be eliminated and new offices created by referendum; and the duties, powers and functions of officers changed. Accordingly, the same officer could be authorized to perform the duties of the recorder and the clerk. Because this will require a referendum, I caution that the proposition before the electorate on the elimination of an office should be clear that the duties of the office are to be continued by another officer if this is the intent. I refer you also to my previous opinion No. NP-355, issued October 6, 1971, and to opinion No. S-1126 issued this date.

Very truly yours,

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