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FILE NO. S-644

**MUNICIPAL CORPORATIONS:
Forest Preserve District**

**Honorable Jack Hoogasian
State's Attorney
Lake County
County Building
Waukegan, Illinois 60085**

Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"Please advise whether the State's Attorney,
under our laws, should represent the Forest
Preserve."

In determining the answer to your question, I direct
your attention to section 5 of "An Act in regard to Attorneys
General and State's Attorneys," (Ill. Rev. Stat. 1971, ch. 14,
par. 5) which states as follows:

"The duty of each State's attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned.

(2) To prosecute all forfeited bonds and recognizances, and all actions and proceedings for the recovery of debts, revenues, moneys, fines, penalties and forfeitures accruing to the State or his county, or to any school district or road district in his county; also, to prosecute all suits in his county against railroad or transportation companies, which may be prosecuted in the name of the People of the State of Illinois.

(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

(4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.

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(7) To give his opinion, without fee or reward, to any county officer in his county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned.

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You will note from the foregoing that it is the duty of the State's attorney to represent the county and

county officers. The question then arises whether forest preserve commissioners are county officers.

The county officers are enumerated in Article VII, section 4 of the Illinois Constitution of 1970 and are the sheriff, county clerk, treasurer, coroner, recorder, assessor, auditor, and such other officers as provided by law or by county ordinance. I have examined the provisions of "An Act to provide for the creation and management of forest preserve districts," (Ill. Rev. Stat. 1971, ch. 57 1/2, par. 3a) and I find no provision which declares forest preserve commissioners to be county officers or which requires the State's attorney to represent either the commissioners or the district. Furthermore, section 3a of "An Act to provide for the creation and management of forest preserve districts," (Ill. Rev. Stat. 1971, ch. 57 1/2, par. 3a) provides:

"* * * * From the time of the appointment of the first board of commissioners, such forest preserve district shall be construed in law and equity a body corporate and politic by the name and style determined as aforesaid and by such name may sue and be sued, contract and be contracted with, acquire and hold real and personal estate necessary for its corporate purposes and adopt a seal and alter the same at its pleasure.

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As you know, in a county such as yours where the boundaries of the forest preserve district are coextensive with the county boundaries, the members of the county board act as forest preserve commissioners. The status of the county board members in this instance was clearly set forth in Peabody v. Forest Preserve District, 320 Ill. 454 where the court said at page 462:

"The county commissioners are county officers; (Wulff v. Aldrich, 124 Ill. 591;) the forest preserve commissioners are not. The county and the district are two distinct, independent municipal corporations, though their territory is identical. The commissioners are not officers of the county in the performance of their duties as commissioners of the forest preserve district and are not officers of the district in the performance of their duties as county commissioners. (Perkins v. Commissioners of Cook County, 271 Ill. 449.) Though the same individuals were the commissioners of each corporation, their acts in their capacity as commissioners of one corporation had no effect as acts of the other corporation. * * *

Furthermore, it is clear from section 8 of "An Act to provide for the creation and management of forest preserve districts," (Ill. Rev. Stats. 1971, ch. 57 1/2, par. 8) that the president of the board of commissioners of the forest preserve district has the power to hire

employees, including attorneys. Section 8 reads in pertinent part:

" * * * The president of such board shall have power to appoint a secretary and an assistant secretary, and treasurer and an assistant treasurer and such other officers and such employees as may be necessary, all of whom, excepting the treasurer and attorneys, shall be under civil service rules and regulations, as provided in Section 9 of this Act."

Therefore, because your forest preserve commissioners are not county officers, because the county and the district are two distinct municipal corporations, and because the president of the board of commissioners of the district is authorized to appoint attorneys, I am of the opinion that the State's Attorney does not have a legal duty to represent either the forest preserve commissioners or the forest preserve district.

Very truly yours,

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