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ELECTIONS:
State Electoral Board
Effect of new constitution

Honorable John W. Lewis
Secretary of State
Secretary, State Electoral Board
State House
Springfield, Illinois

Dear Mr. Lewis:

I have your letter of December 2, 1971, wherein
you state:

"As Secretary of State and as Secretary of the
State Electoral Board I am requesting your
opinion concerning the status of the State
Electoral Board in view of Section 5 of Article
III of the Constitution of 1970."

Section 5 of Article III of the Constitution of
1970 reads as follows:

"A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board."

Since July 1, 1971, the effective date of the quoted constitutional provisions, the General Assembly has enacted no law relating to "the size, manner of selection and compensation" of the State Board of Elections or otherwise providing for its activation. Similarly, the General Assembly has not acted to change the composition, duties or responsibilities of the State Electoral Board as provided in The Election Code. (Ill. Rev. Stats. 1969, ch. 46, pars. 1-1 et seq.). The duties of the latter body are essentially ministerial, relating to the receipt of candidates' petitions, certifications to County Clerks of the names of offices and candidates to appear on primary and general election ballots, certification of nominations and elections to office, the canvass of votes for state and national offices and the like. It should also be noted that there are at least 112 other separate election authorities in Illinois consisting of 102 County Clerks, and 10 City Boards of Election Commissioners,

all of which are concerned with the conduct of elections and the administration and enforcement of applicable provisions of The Election Code. Only to a limited extent their duties may be said to fall under the supervision of the State Electoral Board.

Section 5 of Article III of the 1970 constitution was added at first reading on the floor of the Constitutional Convention as an amendment to the Report of the Committee on Amendments and Suffrage. The Debates clearly show that the intent of the Convention in providing for the new State Board of Elections was to secure consistent interpretation and implementation of the general election laws as established by the General Assembly. (6th Ill. Const. Con. -- verbatim transcript, May 14, 1970). While it seems clear from the debates that the concept of a single election authority was not intended to eliminate the 112 separate local election authorities (6th Ill. Const. Con. -- verbatim transcript, Aug. 5, 1970, p. 281), it is also evident that it was the intent of the Convention to have the new Board take over the responsibilities of the State Electoral Board. (6th Ill. Const. Con. -- verbatim transcript, May 14, 1970, p. 159).

Assuming arguendo that the State Board of Elections, once activated, will be held to supersede and take over the functions of the State Electoral Board, the question remains whether the State Board of Elections is now legally existent and operative to supplant the State Electoral Board. The essential question is whether said Section 5 is self-executing. It is my considered judgment that it is not self-executing and, pending action of the General Assembly, the State Board of Elections, even though named in the Constitution, will be without legal existence and without effect on the status of the State Electoral Board.

While there is a presumption that all provisions of a Constitution are self-executing, it is one which yields to evidence of a contrary intention. (Illinois Central R.R. Co. v. Ihlenberg (6th Cir., 1896), 75 F. 873; 16 Am. Jur. 2d. (1964), Constitutional Law §96.) A constitutional provision which contemplates and requires legislation is not in itself self-executing and cannot become effective until made so by the implementing action of the legislature. (Tuttle v. National Bank, 161 Ill. 497). The circumstance that a constitutional provision may be mandatory, as is Section 5 in designating a State Board of Elections, does not render the section self-executing. 16 Am. Jur. 2d. (1964), Constitutional Law §93.

It seems obvious that a State Board of Elections will not exist either de jure or de facto until its members have been selected, its size set and other factors effecting its viability, have been determined, all by legislative enactment of the General Assembly.

Pending compliance by the legislature with the mandate of Section 5, for a State Board of Elections, the Board will be a name or designation only and Section 5 will have no effect on the existing legislation relating to composition, duties and responsibilities of the State Electoral Board. It is well established that a constitutional amendment which is not self-executing does not affect existing legislation until the enactment of the required legislation to put the amendment into effect. Ursuline v. Board of Tax Appeals, 141 Ohio St. 563, 49 N.E.2d 674.

My conclusion that the State Electoral Board continues as a de jure body, without impairment, pending legislative implementation of Section 5 is also strongly supported by Section 9 of the Transition Schedule of the 1970 Constitution, which reads 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."

Until such time as there is an existing and functioning State Board of Elections following action by the General Assembly, the State Electoral Board remains in existence and all laws pertaining thereto will remain in force and cannot be viewed as contrary to or inconsistent with the provisions of the Constitution.

The purpose of the Transition Schedule is to provide for the change-over from the old Constitution to the new one and to obviate confusion which otherwise would arise during the transitional period. To interpret either Section 9 of the Transition Schedule or Section 5 of Article III as terminating the State Electoral Board before the General Assembly has given life to the new Board, would not only result in great confusion but would be absurd. Any such

Honorable John W. Lewis

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interpretation would violate fundamental criteria of Constitutional construction.

Very truly yours,

ATTORNEY GENERAL