



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

March 24, 1994

FILE NO. 94-005

SPECIAL DISTRICTS:
Eligibility for Election of
Fire Protection District Trustee

Honorable Doug Floski
State's Attorney, Ogle County
Ogle County Courthouse
Oregon, Illinois 61061-0395

Dear Mr. Floski:

I have your letter wherein you inquire whether, with respect to fire protection districts which encompass parts of two or more counties, members of the board of trustees must be elected from each of the counties encompassed by the district in order to maintain proportional representation on the board. For the reasons hereinafter stated, it is my opinion that proportional representation of each of the counties must be maintained.

You have stated that the Ogle-Lee Fire Protection District, which is located in portions of both Ogle and Lee Counties, has been governed by an elected board of trustees since a referendum was adopted on that question in 1989. Since that

Honorable Doug Floski - 2.

time, trustees have been elected from both counties. Presently, however, it appears that there will be no candidate from one of the counties in the next election.

Section 4a of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 24.1; 70 ILCS 705/4a (West 1992)) provides for the election of fire protection district trustees following referendum approval. Although section 4a sets forth no qualifications for the office of trustee, and does not mention proportional representation of counties, the sixth paragraph of the section provides:

" * * *

The provisions of Section 4 relating to eligibility, powers and disabilities of trustees shall apply equally to elected trustees.

* * * "

Section 4 of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 24; 70 ILCS 705/4 (West 1992)) provides, in pertinent part:

"(a) A board of trustees consisting of 3 members for the government and control of the affairs and business of a fire protection district incorporated under this Act shall be created in the following manner:

* * *

(4) If the district is located in more than one county, the number of trustees who are residents of a county shall be in proportion, as nearly as practicable, to the number of residents of the district who

Honorable Doug Floski - 3.

reside in that county in relation to the total population of the district.

Upon the expiration of the term of a trustee who is in office on October 1, 1975, the successor shall be a resident of whichever county is entitled to such representation in order to bring about the proportional representation required herein, and he shall be appointed by the county board of that county, or in the case of a home rule county as defined by Article VII, Section 6 of the Constitution of 1970, the chief executive officer of that county, with the advice and consent of the county board.

Thereafter, each trustee shall be succeeded by a resident of the same county who shall be appointed by the same appointing authority; however, the provisions of the preceding paragraph shall apply to the appointment of the successor to each trustee who is in office at the time of the publication of each decennial Federal census of population.

* * *

"

The residency requirements in the quoted passage are, in my opinion, provisions "relating to eligibility", within the meaning of section 4a. Residence, for purpose of election to office, is generally considered to be an eligibility requirement. It should be so considered in this instance.

Based upon the provisions of section 4 of the Act, it is my opinion that the initial elected board of trustees should have reflected the proportional population of district residents in each of the two counties encompassed within the district. Thereafter, just as an appointed trustee is to be succeeded by a

Honorable Doug Floski - 4.

resident of the same county, each elected trustee must be a resident of the same county as his predecessor. The only exception to this rule is that when the decennial census shows that the balance of the population of district residents in each county has changed, the proportional representation of the trustees must be adjusted to reflect the new balance. Therefore, it is my opinion that members of the board must be elected from each county served by the district in approximate proportion to the number of district residents in each county.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in black ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL