



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 31, 1974

FILE NO. S-827

COUNTIES:

**Eligibility for Appointment
as Supervisor of Assessments**

Honorable William E. Lowry
State's Attorney, Pike County
210 N. Monroe Street
Pittsfield, Illinois 62363

Dear Mr. Lowry:

I have your letter wherein you state in pertinent part:

"There presently exists in the County of Pike (a county under township organization with less than 150,000 inhabitants) a vacancy in the office of Supervisor of Assessments. Pursuant to Chapter 120, Section 484a of the Illinois Revised Statutes, the Department gave notice of the time and place of examination and advertised that the applicant must have had at least two years experience in the field of real estate sales, assessments, finance or appraisals. Thereafter, five applicants wrote on the examination and two were certified to the County Board of Pike County as having passed the examination. At the regular

Honorable William E. Lowry - 2.

County Board meeting of August 27, 1974, the County Board interviewed the two applicants and requested each to sign a statement as follows:

'I, the undersigned, hereby certify to the Pike County Board that:

(1) I am an applicant for the position of Supervisor of Assessments of Pike County, Illinois;

(2) I have had at least two years experience in the field of real estate sales, Assessments, finance or appraisals.'

Applicant Number One, a non-county resident, stated that she would sign the written form, but that her acceptance to the office was dependent upon her son successfully obtaining legal custody of her grandson in a divorce proceeding pending in Applicant Number One's county of residence. Because of this uncertainty, the County Board rejected Applicant Number One. Applicant Number Two refused to sign the statement and commented he did not have at least two years experience in the field of real estate sales, assessments finance or appraisals. The County Board thereupon demanded that I write to the Attorney General's office for an opinion as to the following questions concerning Applicant Number Two:

(a) Is it mandatory that the applicant have two years experience in the field of real estate sales assessments, finance or appraisals to be appointed supervisor of assessments?

(b) By the Departments Act of allowing Applicant Number Two to write on the examination, has the requirements of the statute concerning two years experience in the field of real estate sales, assessments, finance or appraisals been waived?

Honorable William E. Lowry - 3.

(c) Would making monthly payments on a real estate mortgage on one's home or business for a period in excess of two years constitute two years experience in the field of real estate finance and satisfy the condition of the statute?

(d) Contrary to Section 483 of Chapter 120 of the Illinois Revised Statutes, may the County Board appoint Applicant Number Two to the position of 'Acting Supervisor of Assessments' for a period of two years and thereafter, appoint Applicant Number Two as Supervisor of Assessments, he then having had two years experience in the field of real estate appraisal?"

Section 3a of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 484a) provides in pertinent part:

"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 to determine his competence to hold such office. The examination shall be conducted by the Department at some convenient location in the county. 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 county, 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. Vacancies shall be filled by the appointment for a full term."

Honorable William E. Lowry - 4.

In answer to your first question, it is my opinion that the requirement of 2 years' experience in the field of real estate sales, assessments, finance or appraisals is mandatory. It is a rule of statutory construction that where the terms of a statute are preemptory and no discretion is reposed, the provisions of the statute should be regarded as mandatory and not directory. (Tuthill v. Rendleman, 387 Ill. 321; Clark v. Quick, 377 Ill. 424.) Section 3a of the Revenue Act of 1939, supra, provides that, in order to be eligible for appointment as supervisor of assessments, a person "must" have 2 years' experience in the field of real estate sales, assessments, finance or appraisals. The use of the word "must" clearly indicates a legislative intent that the experience requirement be mandatory.

In answer to your second question, it is my opinion that the fact that the Department of Local Government Affairs allowed applicant number two to write the examination could not constitute waiver of the experience requirement. As a general rule, a person may waive any alienable right or privilege which belongs to him or to which he is legally entitled

Honorable William E. Lowry - 5.

provided such rights and privileges rest in the individual and are intended for his sole benefit. (People v. Noland, 189 P. 2d 84, Meyer v. Nat'l Buyer Ins. Co. of Hartford, Conn., 269 N.W. 845.) However, the public interest may not be waived (Benane v. International Harvester Co., 299 P. 2d 750; Herman v. McIver, 80 N.W. 2d 500) and a waiver will be inoperative and void if it would be against public policy. Clement v. Clement, 55 S.E. 2d 459; Smith v. Bell, 41 S.E. 2d 695.

The statutory requirement as to experience clearly was not intended for the sole benefit of the Department of Local Government Affairs. Requirements as to experience help to insure the competency of public officials and thereby further the public interest and confer a public benefit. Thus, under the above stated principles as to waiver, the Department of Local Government Affairs would not have the power to waive the statutory requirement as to experience.

For the reasons which follow, the answer to your third question is in the negative. While it is clear that the requirement of 2 years' experience is mandatory, it is not clear what particular activities in the field of real estate sales, assessments, finance, or appraisals are sufficient to constitute such

Honorable William E. Lowry - 6.

experience. The General Assembly apparently intended the determination of the sufficiency of any given activity as experience to be a discretionary matter. Section 3a of the Revenue Act of 1939, supra, does not explicitly designate the proper authority to make this determination. While the Department of Local Government Affairs could arguably make 2 years' experience in real estate sales, assessments, finance or appraisals a condition for eligibility to take the examination (Sholock v. Civil Service Commission, 202 N.E. 2d 231, Mangan v. Department of Civil Service, 102 A. 2d 477), and make the determination with reference thereto, section 3a of the Act, supra, does not so provide. Instead, section 3a of the Act, supra, makes the experience requirement a prerequisite to eligibility for appointment, rather than a prerequisite to eligibility for examination.

It is a cardinal rule of statutory construction that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly. (People ex rel. Kucharski v. Adams, 48 Ill. 2d 540; Lincoln Nat. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489.) Since the county board makes the appointment, apparently the General Assembly intended that, with

Honorable William E. Lowry - 7.

reference to the experience requirement, the county board also make the determination as to eligibility for appointment.

Such a construction would be in accord with the general rule that the appointment of a public officer involves the exercise of discretion, which, unless abused, the courts will not attempt to control. (People ex rel. Henderson v. Redfern, 48 Ill. App. 2d 100.) It is my opinion, however, that the appointment of a person whose sole experience in the field of real estate sales, assessments, finance or appraisals is the making of payments on a real estate mortgage covering his home or business would be an abuse of discretion. Such experience clearly would not, in my opinion, satisfy the statutory experience requirement.

In answer to your fourth question, it is my opinion that the county board may not appoint applicant number two as acting supervisor of assessments for a two-year period and then, upon satisfaction of the two-year experience requirement, appoint said applicant as supervisor of assessments. According to your letter, a vacancy presently exists in the office of supervisor of assessments. Section 3a of the Revenue Act of 1939, supra,

Honorable William E. Lowry - 8.

has no provision for the temporary appointment of an acting supervisor of assessments. Instead, said section expressly provides that vacancies shall be filled by appointment for a full term and that the term of office shall be 4 years from the date of appointment and until a successor is appointed and qualified. Where a statute provides a manner in which vacancies in public offices may be filled, either by election or appointment, such mode is exclusive and the only lawful way in which to fill the vacancies. People v. Pillman, 284 Ill. App. 287.

Moreover, the temporary appointment of a person as acting supervisor of assessments, when such person does not meet the statutory requirements as to eligibility for appointment, would completely undermine said requirements.

Very truly yours,

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