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62706



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FILE NO. S-557

COUNTIES:

Sheriff

Honorable James M. Carr
State's Attorney
DeKalb County Courthouse
Sycamore, Illinois

Dear Mr. Carr:

I have your recent letter wherein you state:

"The sheriff of our county was elected prior to the institution of our new constitution in Illinois. Under the old constitution a sheriff could not succeed himself, whereas under the new constitution he may. It is of concern to our sheriff and others elected under the old constitution as to whether or not they can legally succeed themselves.

"I would appreciate it if at your convenience you could issue a written opinion regarding this matter. If you have any questions regarding the same, feel free to contact me."

Section 8 of Article X of the 1870 Illinois Constitution stated in part as follows:

" * * * * Provided that no person having once been elected to the office of sheriff or treasurer shall be eligible to re-election to said office for four years after the expiration of the term for which he shall have been elected."

As you know, the foregoing provision is not in the 1970 Illinois Constitution. It has been held that the adoption of a new Constitution repeals and supersedes all the provisions of the older Constitution not continued in force by the new instrument. (Ex parte Palm, 255 Mich. 632; Dawson v. Tobin, 74 N.D. 713.) Furthermore, an Illinois decision holds that where language which appears in an old Article of the Constitution does not appear in a new amended Article, the new provisions provide a substitute for the old provision, operate exclusively in its place and reenact or continue in force only that which is reenacted and repeal that which is omitted. People v. Hemphill, 96 Ill. App. 2d 407.

From the foregoing it is apparent that under the new 1970 Illinois Constitution a sheriff may succeed himself.

The only remaining question is whether a person who was elected sheriff while the 1870 Illinois Constitution was in effect could succeed himself inasmuch as the 1970 Constitution replaced the old one. The fact that he was elected while the old Constitution was in effect, would not, in my opinion, preclude him from succeeding himself now. The 1970 Constitution, as mentioned, does not prevent anyone from succeeding himself. Had the new Constitution wanted to prevent the present sheriffs from succeeding themselves it could have so provided. In the absence of such a provision, all persons should be treated alike.

In conclusion, I am of the opinion that a sheriff who was elected when the 1870 Illinois Constitution was in effect may now succeed himself since the present 1970 Illinois Constitution contains no such prohibition.

Very truly yours,

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