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FILE NO. S-477

FEEES AND SALARIES:
Compensation of County Board

Honorable Philip G. Reinhard
State's Attorney
Winnebago County
Courthouse
Rockford, Illinois 61101

Dear Mr. Reinhard:

I have your recent letter wherein you state:

"At the request of the Chairman of the County Board for the County of Winnebago, your opinion is sought concerning the power of the newly organized Winnebago County Board to determine the mode and amount of compensation its members and Chairman may receive.

Under a County Board reapportionment plan adopted on June 24, 1971, the previous County Board of Supervisors determined that County Board Members,

whose terms were to commence on May 1, 1972, would receive compensation on a per diem basis at the rate of \$30.00 per day. The plan also provided that the Board Chairman would receive compensation on the same per diem basis as other Board Members and in addition thereto, the Chairman would receive additional compensation in the amount of \$2,500.00 per year. The determination of the mode and amount of such compensation was made pursuant to provisions of Paragraph 838, Chapter 34 of the Illinois Revised Statutes (Sec. 5, Public Act 76-1650, effective 10-2-69). Such Paragraph 838 apparently requires that the amount and the method of such compensation should be determined and included as an integral part of the reapportionment plan which by statute was required to be adopted prior to July 1, 1971.

Please note that the provisions of Paragraph 838 are seemingly in conflict with the provisions of Paragraph 58.1 of Chapter 53 (Sec. 39.1, Public Act 76-1653, effective 10-2-69), in that Paragraph 58.1 provides that County Board Members---'shall receive such compensation as is fixed by the County Board in accordance with the method of compensation selected by the County Board. Such compensation shall be set before the general election at which County Board Members are elected. The Chairman of the County Board shall receive such additional compensation as determined by the County Board in reapportioning the county'. Section 58.1 apparently would have permitted the County Board of Supervisors to have determined both the method and amount of compensation for the Chairman and Board Members at any time prior to the date of the general election at which they were elected (April 4, 1972).

Under the provisions of Paragraph 839 of Chapter 34, Illinois Revised Statutes, the terms of all Board Members elected on April 4, 1972 commence on the first Monday in May, 1972.

The members of the present County Board who took office on May 1, 1972, now wish to take appropriate action to change both the method and the amount of compensation received by them, which compensation was previously determined as a part of the County Board reapportionment plan adopted on June 24, 1971. Specifically, the present Board desires to change the method of compensation from the per diem form to an annual salary form and further to determine the amount of annual salary to be received by the Members and the Chairman.

It is contended by the present Board Members that the Illinois General Assembly improperly authorized the previous County Board of Supervisors to determine the mode and amount of compensation to be received by future County Board Members. It is felt that inasmuch as the County Board of Supervisors ceased to exist as the County governing body after April 30, 1972, it could not properly have been given authority to determine compensation to be received by the Board Members holding office after May 1, 1972.

Your opinion is sought concerning the following specific questions:

1. Was it proper for the Illinois General Assembly to empower the previous County Board of Supervisors to determine the method and amount of compensation to be received by the County Board Members and the County Board Chairman taking office on the first Monday in May, 1972, as provided in Paragraph 838, Chapter 34, Illinois Revised Statutes?
2. Assuming your answer to question No. 1 is negative, may the newly elected County Board now proceed to take

appropriate action to determine the mode and the amount of compensation to be received by them during their terms of office?

Assuming your answer to question No. 1 is positive, please answer the following questions:

3. Was the previous Board of Supervisors required, under provisions of Paragraph 838, Chapter 34, to determine the mode and amount of compensation of the Board Chairman and Board Members as a part of the County Board reapportionment plan prior to July 1, 1971; or may they have deferred determining the amount or method of such compensation, or both, to a date preceeding the general election of Board Members held April 4, 1972, as apparently provided in Paragraph 58.1 of Chapter 53? (Note, this question is not moot as it will rise again in 1981 under provisions of Paragraph 832 of Chapter 34.)

4. Taking into consideration the provisions of Paragraph 838 of Chapter 34, Paragraph 58.1 of Chapter 53, Sec. 9(b), Article VII of the 1970 Illinois Constitution and the rationale of a previous Attorney General's opinion dated April 15, 1963 (Illinois Attorney General Report and Opinions - 1963, page 112), would it have been proper for the previous County Board of Supervisors to have determined the mode and amount of Board Member compensation after the date of the general election (April 4, 1972) and before the date the terms of newly elected Board Members commenced (May 1, 1972)?

5. Considering the provisions of the Illinois Statutes and the 1970 Illinois Constitution previously referred to, may the present County Board properly alter the method by which Board Members compensation is determined from a per diem basis to an annual salary basis and also determine the amount of such annual salary to be received by the Board Members and the Board Chairman?

In your first question you have asked whether it was proper for the Illinois General Assembly to empower the previous county board of supervisors to determine the method and amount of compensation to be received by the county board members and the county board chairman taking office on the first Monday in May, 1972, as provided in Section 8 of "An Act relating to the composition and election of county boards in certain counties," (Ill. Rev. Stats., 1971, ch. 34, par. 838) which states as follows:

"At the time it reapportions its county under this Act, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis or on an annual basis and shall fix the amount of that salary. In addition, the county board shall determine the amount of any additional compensation for the chairman of the county board."

In answer to your question it should be noted that counties are but political subdivisions of the State, and are subject to the full control of the State, acting by general law through the legislature, (Stark County v. Henry County, 326 Ill. 535).

In Opinion No. F-900 which was issued by this office on April 15, 1963, found at page 112 of the 1963 Illinois Attorney General's

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Opinions, it was held that a county board of supervisors had statutory authority to fix the compensation of a succeeding county board if it was done prior to the term of the newly elected board. I am in agreement with this holding of the opinion. Consequently, your first question is answered in the affirmative.

In your third and fourth questions you have asked whether the previous county board could have deferred determining the amount or method of compensation to a date preceding or following the date of the general election of county board members, if done before the beginning of the terms of the newly elected board members. It is the policy of this office not to issue an opinion unless a bona fide need for it exists. It appears that your county is not confronted with these questions at this time and I therefore must respectfully decline to answer these two questions.

In your last question you have asked whether the present county board may properly alter the method by which the board members' compensation is determined from a per diem

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basis to an annual salary basis and also determine the amount of such annual salary to be received by the board members and the board chairman. Your attention is called to Section 9(b) of article VII of the 1970 Illinois Constitution, which provides as follows:

"An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Since the compensation or salary of an elected officer of a county may not be increased or decreased during the term for which that officer was elected, I am of the opinion that the present county board may not alter the method of determining the compensation of the present board members nor may it alter the amount of such compensation. A change in the method of determining the compensation would necessarily result in a change in the amount of compensation. Your last question is, therefore, answered in the negative.

Very truly yours,

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