



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-359

CONSTITUTION:
COUNTY:
ELECTIONS:
Authority of County Board to
Provide for Caucus Selection
of Board Candidates

Honorable Allen F. Bennett
State's Attorney
Moultrie County
Sullivan, Illinois 61951

Dear Mr. Bennett:

Your letter requests my opinion on the following question:

"Pursuant to a request from the Moultrie County Board of Supervisors, Mrs. Evelyn Kidwell, Moultrie County Clerk, asked my opinion concerning an interpretation of Chapter 46, Paragraph 7-1.01, Illinois Revised Statutes.

"Prior to July 1, 1971 the Moultrie County Board passed a resolution establishing County Board districts. The Board inadvertently failed to provide for nomination of County Board members

under the section of the statute cited above. On September 14, 1971, the clerk, upon my recommendation, advised the board that it should decide whether it wanted board nominations by 'party caucus' or 'primary election'. The board then proceeded to choose the 'caucus' method.

"My question, therefore, and prefaced by the summary explanation above, is whether a County Board may provide at this time, by resolution, for nomination of County Board Members in accordance with the aforesaid chapter and section. There was some question that the board waived the right to do so by failing to include a method of nomination in its earlier resolution establishing districts."

In October 1969, "AN ACT relating to the composition and election of county boards in certain counties" became effective (Ill. Rev. Stat. 1969, Ch. 34, Par. 831 et seq.). Section 1 of that Act (Par. 831) provides in part that: "a. 'District' means a county board district established as provided in this Act." Sections 2, 3, and 4 of the Act require that by July 1, 1971 there be reapportionment on an equal population basis, determination of the number of members on the county board, and a determination as to whether county board members shall be elected at large or by district.

You state that reapportionment and determination of the number of board members was made pursuant to statute prior to July 1. Having so acted, the board could then proceed under The Election Code (Ill. Rev. Stat. 1969, Ch. 46, Par. 1-1 et seq.). The first grammatical paragraph of section 7-1.01 of the Code reads as follows:

"In any county that has been divided into county board districts pursuant to 'An Act relating to the composition and election of county boards in certain counties', enacted by the 76th General Assembly, the county board may provide, by resolution, for nomination of county board members under this Section. In that event, this Section shall govern such nominations and shall prevail in case of conflict with any other Section of this Act." par. 7-1.01.

That Section then authorizes selection of candidates by party caucus if the county board so provides by resolution.

I note both that the language of the provision is permissive, "may", and that no time for this action is specified. It must, of course, be interpreted to mean such action is to be taken a reasonable period of time prior to the election of board members. A September resolution preceding an April election would on its face seem a

a reasonable time.

On July 1, 1971, the Constitution of 1970 became effective. Article VII, Sec. 3 (b) provides:

"The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum"

Under the Transition Schedule of the Constitution,

Section 9 provides in part:

"* * * All laws * * * 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 * * *"

Consequently, the statutory provisions quoted concerning redistricting of county boards and resolutions for nomination of county board candidates by caucus remain effective. However, the question arises as to whether the county board resolution after July 1 constitutes a "change" in the "method of electing board members" which require a county-wide referendum under the new Constitution.

It is apparent from a reading of the report of the Committee on Local Government of the Sixth Illinois

Constitutional Convention, and the transcripts of the floor debates of the convention that Section 3 (b) was intended only to reach the substantive nature of the governmental structure as differentiated from the procedural nature of the election process.

For instance, in the Floor Debate on July 28, 1970, at the Constitutional Convention, it was stated (Transcript, p. 46) " * * * in Chapter 34 there is a provision at least for the township counties for reapportioning themselves * * *. This is not a change in the plan. It is not a basic change in either single member districts, multi-member districts or this type of thing. * * *"

At page 73 of the Transcript of Floor Debate on July 28, 1970, a delegate stated:

" * * * the word 'plans' is defined in the second phrase there which may-- or clause, which may include election at large or by districts * * *. When we talk about a plan of election it's basically whether you are going to change from a single member district to a multi-member district or go from at large to a single member district. These are plans. What you are referring to is reapportionment. That would not change the plan * * *" (emphasis supplied)

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At page 74 of the Transcript of Floor Debate on July 28, Mr. Tomei said:

"A particular reapportionment plan, then, in other words, would not be submitted to referendum."

The reply by Mrs. Anderson was: "Oh, no. That would be simply reapportioning the district."

The word "plans" as originally proposed for use in Section 3 (b) Article VII, was discarded in favor of the present "methods" pursuant to the proposal of the Style, Drafting, and Submission Committee, and in its Explanation (p. 30) of this change, the Committee stated:

"'Methods' does not include redistricting, which may be done without General Assembly authorization."

It is consequently my opinion that the County Board resolution concerning use of a caucus for nomination for board members is not a "change in method" within the meaning of Section 3 (b) of Article VII of the Constitution requiring referendum, and is within the county board's authority under Section 7-1.01 of the Election Code.

Very truly yours,

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