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File No. S-508

**COUNTIES:
Elimination of County
Coroner's Office**

**Honorable Ronald A. Niemann
State's Attorney
Marion County
Salem, Illinois 62881**

Dear Sir:

I have your recent letter wherein you state in part:

"The County Clerk of Marion County has requested me to obtain from you your opinion on a question concerning the elimination of the Coroner's office by county-wide referendum.

The situation is this: S.H.A. Const. Art. 7, § 4, subparagraph (c) states as follows: 'that any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum.'

S.H.A. Const. Art. 7, § 11, (a) and (b) provide for manner in which a referendum may be held to eliminate the office pursuant to county-wide referendum.

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My questions are, first, assuming the Board of Supervisors of Marion County vote to place the issue of eliminating the coroner's job at the general election on November 7, 1972 and candidates are also running for election to the office of coroner on November 7, 1972, if the referendum passes will this eliminate the winner of the coroner's election from holding that office for the next four years? Second, would the county be required to pay the salary of a coroner for the next four years if the referendum abolished the job at the November 7, 1972 election?"

Section 4(c) of Article VII of the Illinois Constitution of 1970 reads as follows:

"(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Officers other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance."

This section of the constitution permits elimination of the county coroner's office by county-wide referendum.

Section 11(a) of Article VII of the Illinois Constitution of 1970 provides:

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"(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law."

This section permits initiation and submission of the question of elimination to the electors by resolution of the county board.

Section 11(b) of Article VII of the Illinois Constitution of 1970 provides in part:

"Referenda required by this Article shall be held at general elections, except as otherwise provided by law. * * *

Article 28, Section 4 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 28-4) reads as follows:

"In any case in which Article VII or paragraph (a) of Section 5 of the Transition Schedule of the Constitution authorizes any action to be taken by or with respect to any unit of local government, as defined in Section 1 of Article VII of the Constitution, by or subject to approval by referendum, any such referendum shall be initiated and held in accordance with this Section.

The governing body of the unit of local government may by resolution and shall, upon the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors to or greater than 10% of the number who voted in the last general election in the governmental unit and who request such a referendum, provide for the submission of the proposal for such action to the voters of the governmental unit at a

general, regular or special election, but in no event later than the first general or regular election occurring at least 70 days after the adoption of such resolution or the filing of such petition, as the case may be.

If the action to be taken requires a referendum involving 2 or more units of local government, the proposal shall be submitted to the voters of such governmental units by the county clerk if the governmental units are in the same county, or by the Secretary of State if the governmental units are in more than one county, upon receipt of appropriate resolutions by the respective governing bodies or upon receipt of petitions of the voters of the several governmental units transmitted by the respective clerks or secretaries to the county clerk or Secretary of State as the case may be. Upon the organization of the State Board of Elections, the board shall perform the duties of the Secretary of State under this Act.

Notice of the proposal to be voted on shall be given in the same manner and at the same time as notice of the general or regular or special election. In the absence of any statutory provision governing notice of a special election, notice shall be given in the same manner as is provided for regular elections. The ballot shall be in substantially the form prescribed in Section 16-7.

This Section is intended to provide a method of submission to referendum in all cases of proposals for actions which are authorized by Article VII of the Constitution by or subject to approval by referendum and supersedes any conflicting statutory provisions except those contained in the 'County Urban Services Act' and the 'County Executive Act'.

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Referenda provided for in this Section may not be held more than once in any 23-month period on the same proposition, provided that in any municipality a referendum to elect not to be a home rule unit may not be held prior to June 1, 1975 and thereafter may be held only once within any 47-month period."

The above section permits the county board to provide for the submission of the proposal to eliminate the office of county coroner to the voters of the county at a general, regular or special election, but in no event later than the first general or regular election occurring at least 78 days after the adoption of the resolution.

Therefore, it can be concluded from the above constitutional and statutory provisions the question of elimination of the office of county coroner can be submitted to the voters of the county at a general election.

A reading of the transcript of the debates of the Constitutional Convention reveals the intent of the delegates to the convention regarding elimination of county offices, to be to vest powers in the people of the several counties to eliminate certain offices by referendum without limitation. (6th Ill. Const. Con., No. 94, July 28, 1970, pp. 346-348). It has been said, the fact that an officer is appointed or

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elected for a definite term is no limitation of the power to abolish the office. (McCartney v. Franco, 87 N.J. Super. 292, 209 A. 2d 329 (1965); 3 McQuillin, Municipal Corporations, Officers, §12.119). Accordingly, the people of the several counties may abolish an office by referendum at the same election in which candidates to fill that office are voted upon.

In answer to your second question, our courts have held, going back to the earliest days of statehood, that when an office is abolished all rights to that office, including further compensation, cease. (People v. The Auditor, 2 Ill. 537; Ewarts v. State, 4 Ill. Ct. Cl. 320). Section 9(b) of Article VII of the Illinois Constitution of 1970, reads as follows:

"(b) 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."

In view of court decisions involving similar constitutional provisions, I am of the opinion that said section 9(b) does not prevent abolition of the coroner's office under the circumstances presented in your letter.

Very truly yours,

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