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FILE NO. S-639

CONSTITUTION:
State Officers -
Circuit Clerk

Honorable Frederick R. Odendahl
State's Attorney
Warren County
Monmouth, Illinois 61452

Dear Mr. Odendahl:

I have your letter wherein you state:

"Article VI, The Judiciary, Section 18, Clerks of Courts, paragraphs (b) and (c) of the Constitution of the State of Illinois, 1970, are as follows:

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.'

Article VII, Local Government, Section 4, County officers, paragraph (c) of the Constitution of the State of Illinois, 1970, is, in part, 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. ----'

Article VII, Local Government, Section 9, Salaries and Fees, paragraph (b) of the Constitution of the State of Illinois, 1970, is 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.'

Your opinion is respectfully requested as to the effect of Article VII, Local Government, Section 9, Salaries and Fees, paragraph (b) of the Constitution of the State of Illinois, 1970, in relation to Article VI, The Judiciary, Section 18, Clerks of Courts, paragraphs (b) and (c)."

A "unit of local government" is defined by section 1 of article VII of the Illinois Constitution of 1970 as follows:

" * * * 'Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."

Note that a county is a unit of local government. If a circuit court clerk is a county officer, then, he is ipso facto an officer of a unit of local government. Whether or not the circuit court clerk is a county officer is the issue to be resolved!

It should also be pointed out that section 18(b) of article VI of the Illinois Constitution of 1970 is substantially a reproduction of section 20 of article VI of the Illinois Constitution of 1870 as amended. (Vol. 6, 6th Ill. Const. Con., Comm. Proposals, pp. 1057-1058 (1972)). Said section 20 reads as follows:

"The General Assembly shall provide by law for the selection by the judges or election, terms of office, removal for cause and salaries of clerks and other non-judicial officers of the various courts; provided that a clerk shall be selected or elected for each Appellate Court District."

Section 20 of article VI of the Illinois Constitution of 1870, as amended, was part of the Judicial Article of 1962 which became effective on January 1, 1964. Prior to the adoption of the Judicial Article of 1962, circuit court clerks were specifically referred to as county officers by section 8 of article X of the Illinois Constitution of 1870. Said section 8 reads as follows:

"In each county there shall be elected the following County Officers at the general election to be held on the Tuesday after the first Monday in November A.D. 1882, a County Judge, County Clerk, Sheriff and Treasurer, and at the election to be held on the Tuesday after the first Monday in November A.D. 1884, a Coroner and Clerk of the Circuit Court (who may be ex-officio recorder of deeds, except in Counties having 60,000 and more inhabitants, in which Counties a Recorder of deeds shall be elected at the general election in 1884) each of said officers shall enter upon the duties of his office, respectively on the first Monday of December, after his election, and they shall hold their respective offices for the term of four years, and until their successors are elected and qualified. Provided that no person having once been elected to the office of Sheriff or Treasurer shall be eligible to reelection to said office for four years after the expiration of the term for which he shall have been elected." (Emphasis added.)

Two dramatic changes were effected by section 20 of article VI. One, the circuit court clerk could now be appointed or elected. Of course, under section 8 of article X his election was mandated. Secondly, the circuit court clerk is referred to as a non-judicial officer of the court.

The effect of section 20 of article VI of the Illinois Constitution of 1870, as amended, upon section 8 of article X of the Illinois Constitution of 1870 was only

recently revealed by the Illinois Supreme Court in Johnson v. State Electoral Board, 53 Ill. 2d 256. In Johnson, the court held that section 20 of article X of the Illinois Constitution of 1870, as amended, impliedly repealed that part of section 8 of article X of the Illinois Constitution of 1870 that pertained to the selection procedure of circuit court clerks. In reaching this conclusion, the court, at page 258, reasoned as follows:

* * * * The general principles applicable to the construction of statutes similarly apply in the construction of constitutional provisions. (Peabody v. Russell, 301 Ill. 439, 443.) Where two statutes are irreconcilable, the one which was more recently adopted will abrogate the earlier to the extent that they are inconsistent. (Grenier & Co. v. Stevenson, 42 Ill. 2d 289, 294.) Section 20 of article VI of the 1870 constitution, as amended, is irreconcilable with section 8 of article X of that document to the extent that the later adopted provision granted the General Assembly an alternative in the selection procedure of circuit court clerks. Section 8 of article X was therefore impliedly repealed, as it pertained to the selection procedure of circuit court clerks, by the 1962 amendment to the Judicial Article. * * * "

The court did not decide the question of whether or not a circuit court clerk was still a county officer. However, by utilizing identical steps of legal reasoning, an answer to this question readily appears.

Johnson v. State Electoral Board, 53 Ill. 2d 256, teaches us that the rules of statutory construction may be employed in construing a state constitution. (Peabody v. Russell, 301 Ill. 439, 443). It is a well known rule of statutory construction that where two statutes are irreconcilable the one which was recently adopted will abrogate the earlier to the extent that they are inconsistent. (Grenier & Co. v. Stevenson, 42 Ill. 2d 289, 294). Section 20 of article VI of the Illinois Constitution of 1870, as amended, is inconsistent with section 8 of article X of the Illinois Constitution of 1870 in that section 8 refers to the circuit court clerk as a county officer, while Section 20 refers to the clerk as a non-judicial officer of the court. Therefore, section 8 of article X was impliedly repealed, as it pertained to the designation of the circuit court clerk as a county officer, by the 1962 amendment to the Judicial Article.

The debates of the Sixth Illinois Constitutional Convention support the conclusion that the Judicial Article of 1962 changed the status of the circuit court clerk from county officer to non-judicial officer of the circuit court. (Vol. 4, 6th Ill. Const. Con., verbatim transcripts, pp. 2630-2640 (1972)). In discussing a proposal that the

circuit court clerks be made to turn over the fees they collect to the county treasurer, Delegate Parkhurst made the following statement:

"Now, the trouble is that the circuit clerk by definition is no longer a county official. He is now, by the mandate of the judicial article, as indeed it has been since 1962, he is now an official of the court system. He is not a county officer. * * * "

Vol. 4, 6th Ill. Const. Con.,
verbatim transcripts,
p. 2633 (1972).

Further study of the debates of the Sixth Illinois Constitutional Convention reveal that the Convention was squarely presented with the issue of whether or not the circuit court clerk was an officer of a unit of local government. Section 9(a) of article VII of the Illinois Constitution of 1970 had its origin in section 9 of Proposal No. 1 of the Committee on Local Government. (Vol. 7, 6th Ill. Const. Con., Committee Proposals, p. 1584 (1972)). Section 9 of Proposal No. 1 reads as follows:

"Officers and employees of units of local government shall not be compensated, and office expenses shall not be paid by fees collected. All fees shall be deposited upon receipt with the treasurer of the unit. Officers and employees of units of local

government may collect fees in the amounts and in the manner as provided by law, but fees shall not be based upon funds collected or the levy or extension of taxes."

A motion was made by Delegate Dunn to amend section 9 of Proposal No. 1 to read as follows:

"Officers and employees of units of local government and clerks of the circuit courts shall not be compensated and office expenses shall not be paid by fees collected. All fees shall be deposited upon receipt with the treasurer of the unit if required by law or ordinance."

Vol. IV, 6th Ill. Const. Con.,
verbatim transcripts,
p. 3412 (1972).

Delegate Dunn, in explaining his proposed amendment, stated that there were grave doubts that a circuit court clerk was indeed an officer of a unit of local government. Thus, the amendment was necessary to insure that circuit court clerks would turn their fees over to the county treasurer. The amendment was defeated.

The three branches of state government are the legislative, executive and judicial. (Ill. Const., art. II, sec. 1). Section 1 of article VI of the Illinois Constitution reveals that the circuit court is an integral part of the judicial branch of state government. Said section 1 reads as follows:

"The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."

Since the circuit court clerk is a non-judicial officer of the circuit court, he is a non-judicial officer of the judicial branch of state government. It is not novel to refer to a clerk of a court as a non-judicial officer of the judicial branch of state government. The Illinois Supreme Court has employed similar language in discussing the office of Clerk of the Supreme Court.

In People ex rel. Vandenberg v. Brady, 275 Ill. 261, at p. 262, the court stated:

"A clerk of a court is an officer of a court who has charge of the clerical part of its business and keeps its records and seal, issues processes, endorsements and orders, and makes certified copies from the record, and etc. Such an officer manifestly belongs to the judicial department of the state."

See also, People ex rel. Bensenville Community High School Dist. #100 v. Rathje, 333 Ill. 304; People ex rel. Partridge v. Windes, 275 Ill. 108, 113; Toth v. Samuel Phillipson & Co., 250 Ill. App. 247, 252; 11 I.L.P., Clerks of Court, sec. 1 (1955).

In conclusion, I am of the opinion that a circuit court clerk is not an officer of a unit of local government. A circuit court clerk is a non-judicial officer of

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the judicial branch of state government. Therefore, the provisions of section 9(b) of article VII of the Illinois Constitution of 1970 do not apply to the circuit court clerk.

Very truly yours,

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