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FILE NO. S-558

ELECTIONS:
Compensation of
Election Judges

Honorable Gerry L. Dondanville
State's Attorney
Kane County
Court House
Geneva, Illinois 60134

Dear Mr. Dondanville:

I have your recent letter in which you have asked my opinion as to the proper payment for election judges for the general election on November 7, 1972. You have pointed out that under the provision of Section 13-10 of The Election Code that election judges in counties of less than 500,000 receive a per diem compensation. In addition, the judges are to be paid \$3.00 each for each 100 voters or portion thereof, in excess of 200 voters

voting for candidates in the election district or precinct wherein the judge is serving. The statute, however, further provides that no such extra compensation shall be paid in any precinct in which no paper ballots are counted by the judges. You have advised that your county used the electronic voting system but that separate paper ballots were used for judicial candidates seeking retention in office. Specifically, you have asked whether a judicial retention ballot is a "paper ballot" so that the judges of election should receive the additional compensation.

Section 13-10 of The Election Code, (Ill. Rev. Stat. 1971, ch. 46, par. 13-10) provides as follows:

"The compensation of the judges of all primaries and all elections in counties of less than 500,000 inhabitants shall be fixed by the respective county boards or boards of election commissioners in all counties and municipalities, but in no case shall such compensation be less than \$20 nor more than \$30 per day. The compensation of judges of all primaries and all elections in counties having a population of 500,000 or more shall be \$30 per day. In addition to their per day compensation and notwithstanding the limitations thereon stated herein, the judges of election, in all counties with a population of less than 500,000, shall be paid \$3 each for each 100

voters or portion thereof, in excess of 200 voters voting for candidates in the election district or precinct wherein the judge is serving, whether a primary or an election is being held. However, no such extra compensation shall be paid to the judges of election in any precinct in which no paper ballots are counted by such judges of election. The 2 judges of election in counties having a population of less than 500,000 who deliver the returns to the county clerk shall each be allowed and paid a sum not to exceed \$2.50 for such services and 10 cents per mile for every mile necessarily travelled in going to and returning from the office or place to which they deliver the returns.

"However, all judges who have been certified by the County Clerk or Board of Election Commissioners as having satisfactorily completed, within the 2 years preceding the day of election, the training course for judges of election, as provided in Sections 13-2.1, 13-2.2 and 14-4.1 of this Act, shall receive additional compensation of \$5 per day.

"In precincts in which there are tally judges, the compensation of the tally judges shall be 2/3 of that of the judges of election, and each holdover judge shall be paid the compensation of a judge of election plus that of a tally judge."

The term "ballot" is not defined by The Election Code. It has been held that courts will apply to words appearing in legislative enactments the common dictionary

meaning or commonly accepted use of the words unless the words are otherwise defined by the General Assembly. (Bowes v. City of Chicago, 3 Ill. 2d 175, 120 N.E. 2d 15.) Webster's New International Dictionary, Second Edition defines ballot as follows:

"Any object, especially a printed or written ticket or single sheet, or slip of paper, used generally in secret voting. A printed ballot, as officially prepared for public elections, contains the names of candidates, or referenda propositions."

In Lynch v. Malley, 215 Ill. 574 at page 578 the Illinois Supreme Court stated:

"A ballot is variously defined by standard authorities as a 'ballot or ticket used in voting; a little ball used in giving votes; a piece of paper, or other suitable material, with the name written upon it of the person to be voted for.' (Anderson's Law Dict. 103; 3 Am. & Eng. Ency. of Law,--2d ed.--768; Cooley's Const. Lim. 604.) In earlier days, when the voter desired to indicate his choice for a candidate he did so by either a showing of the hands or viva voce. By either of these methods the voting was necessarily public, and every person might know how others voted. It was to avoid such publicity that voting by ballot was adopted, and we think the constitutional provision here in question simply means that the voting shall be secret, and we understand the proper meaning of the word 'ballot' to be

secret voting as contradistinguished from that of showing of hands or viva voce voting."

From the foregoing it seems clear that the term "ballot" in Illinois generally refers to a method of voting in secret and does not necessarily refer to the format or composition of the means used for voting. Your attention is also called to the case of People ex rel. Barrett v. Barrett, 31 Ill. 2d 360 which refers to a paper used for voting for the retention of judges as a ballot. Section 16-6.1 of The Election Code, (Ill. Rev. Stat. 1971, ch. 46, par. 16-6.1) provides in part:

" * * * * * * * * * "

"The names of all candidates thus submitting their names for retention in office in any particular judicial district, circuit, county or unit shall appear on the same ballot which shall be separate from all other ballots voted on at the general election.

" * * * * * * * * * *"

In conclusion, I am of the opinion that the paper on which judges names were printed as candidates for retention in office were ballots. It follows, therefore,

Honorable Gerry L. Dondanville - 6

that the election judges should receive the additional
compensation provided for in Section 13-10 of The Election
Code.

Very truly yours,

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