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FILE NO. S-474

COUNTIES:
County Board

Honorable Paul R. Welch
State's Attorney
McLean County
220 Unity Building
Bloomington, Illinois 61701

Dear Mr. Welch:

I have your recent letter wherein you state:

"Would you please answer the following inquiry concerning the new County Board which took office on the 1st day of May:

There are certain provisions of the statutes relating to county government that use the term 'County Board of Supervisors,' and further which obviously antedate the reapportionment and the resultant new Board. Is the term 'Board of Supervisors' to be read as the 'County Board,' or in the alternative is any provision using the term

'Board of Supervisors' not binding upon the new Board, thus allowing them to adopt their own rules consistent with the powers conferred thereon.

The question specifically relates to the setting of meetings and the provisions of Section 851, Chapter 34, Illinois Revised Statutes, 1971."

Section 23 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1971, ch. 34, par. 302) provides:

"The powers of the county as a body corporate or politic, shall be exercised by a county board, to wit: In counties under township organization (except the County of Cook), by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law, until the first Monday in May, 1972, and, commencing with that date, shall be composed of the county board members elected under "An Act relating to the composition and election of county boards in certain counties", enacted by the 76th General Assembly; in the County of Cook, by a board of county commissioners, pursuant to section 7, article 10 of the constitution; in counties not under township organization, by the board of county commissioners."

As you know, the county board was called the county board of supervisors in township counties since the county board was composed of the township supervisors and assistant supervisors in the county. There are numerous statutes which antedate the reapportionment of counties and the resultant new board.

You have referred to one of such statutes which is Section 49 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1971, ch. 34, par. 851) which states:

"The annual meetings of the board of supervisors shall be held on the second Tuesday of September in each year, at the county seat, and if the court house is convenient, such meetings shall be held there. A regular meeting of the board shall be held on the second Monday of June, each year at the county seat, and at such other times as may be prescribed by law."

In construing a statute the court should give a construction to a statute which will uphold its validity and give it effect, rather than nullify it, Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456; People v. Dale, 406 Ill. 238; People ex rel Sellers v. Brady, 262 Ill. 578.

In seeking to give effect to the intention of the General Assembly, the courts are not controlled by the literal meaning of the language used in the statute, but they must consider the spirit of the enactment. The spirit or intention of the law prevails over the letter thereof, (Hoyne v. Danisch, 264 Ill. 467; U.S. Industrial Alcohol Co. v. Nudelman, 375 Ill. 342). This rule of construction is especially applicable where

adherence to the letter would result in absurdity or defeat the purpose of the statute, (People ex rel Barrett v. Thillens, 400 Ill. 224). In adhering to this rule words may be modified or rejected and others substituted, People ex rel Simpson v. Funkhouser, 385 Ill. 396.

Applying the foregoing legal principles to your question, I am of the opinion that the term "county board of supervisors" as used in Section 49 of "An Act to revise the law in relation to counties," (Ill. Rev. Stats., 1971, ch. 34, par. 851) should be read as "county board". It would be unreasonable to declare that this and all similar statutes have no effect. However, these principles must necessarily be applied on an individual, case by case, basis and may not achieve the same result when applied to other statutory provisions. A construction of statutes should be given which will uphold their validity rather than defeat them. The intention of the General Assembly should prevail over the letter of the statute.

Very truly yours,

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