



NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

September 27, 1983

FILE NO. 83-013

ELECTIONS:
Initiation of Referenda on Advisory
Questions of Public Policy

Honorable Gary L. Peterlin
State's Attorney of LaSalle County
707 Etna Road, Room 215
P.O. Box 594
Ottawa, Illinois 61350

Dear Mr. Peterlin:

I have your letter wherein you inquire whether the county board of a non-home-rule county may, by ordinance or resolution, initiate referenda on advisory questions of public policy or whether such referenda may be initiated only by petition as provided in section 28-6 of The Election Code. (Ill. Rev. Stat. 1982 Supp., ch. 46. par. 28-6.) For the reasons stated below, it is my opinion that referenda on advisory questions of public policy may be initiated by the county board of a non-home-rule county only when express constitutional or

statutory authority exists for such action; in the absence of such authority, such referenda may be initiated only by the method prescribed in section 28-6 of the Code.

Referenda on advisory questions of public policy have been submitted to voters on a variety of issues, such as real estate tax increases, local governmental regulation of public utilities, and a moratorium on the testing, production and deployment of nuclear weapons. The results of such referenda are merely advisory; they have no binding legal effect. (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-6; see also Georges v. Carney (7th Cir. 1982), 691 F.2d 297, 299.) There are two possible methods for initiating the submission of a public question to voters: by a petition of electors (see Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-6) or by a resolution or ordinance of the governing body of a local governmental unit (see, e.g., Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-7). You inquire under what circumstances the county board of a non-home-rule county may initiate, by resolution or ordinance, a referendum on an advisory question of public policy.

It is well established that non-home-rule units of local government have no inherent power. (Ross v. City of Geneva (1978), 71 Ill. 2d 27, 31.) Section 7 of article VII of the Illinois Constitution of 1970 provides that:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to

exercise this power jointly with other counties and municipalities * * *; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services."

It is readily apparent that none of the five powers expressly granted to non-home-rule counties in article VII, section 7 encompasses the power to initiate referenda on advisory questions of public policy. Thus, the authority of a county board of a non-home-rule county to initiate an advisory question of public policy must be found, if it exists at all, in a statute or be necessarily implied therefrom. (See Redmond v. Novak (1981), 86 Ill. 2d 374, 382.)

Article 28 of The Election Code (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-1 et seq.) provides a comprehensive and detailed framework for the submission of public questions to the voters of the State or of any political subdivision or district. The term "public question" includes advisory questions of public policy. (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 1-3.) Section 28-1 of the Code (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-1) provides in pertinent part:

"The initiation and submission of all public questions to be voted upon by the electors of the State or of any political subdivision or district shall be subject to the provisions of this Article.

Questions of public policy which have any legal effect shall be submitted to referendum only as authorized by a statute which so provides or by the Constitution. Advisory questions of public policy shall be submitted to referendum pursuant to Section 28-5 or pursuant to a statute which so provides.

The method of initiating the submission of a public question shall be as provided by the statute authorizing such public question, or as provided by the Constitution.

All public questions shall be initiated, submitted and printed on the ballot in the form required by Section 16-7 of this Act, except as may otherwise be specified in the statute authorizing a public question.

* * *

"

(Emphasis added.)

Section 28-1 provides clearly and directly that "[t]he method of initiating the submission of a public question shall be as provided by the statute authorizing such public question, or as provided by the Constitution". When the language of a statute is plain and unambiguous, the plain meaning of the statute must be given effect. (People ex. rel. Cruz v. Fitzgerald (1977), 66 Ill. 2d 546, 551.) According to the express terms of section 28-1 of The Election Code, a referendum on a question of public policy may be initiated only by the method provided in either the statute authorizing such public question or the constitution. Consequently, in the absence of an authorizing

statutory or constitutional provision, the county board of a non-home-rule county has no power to initiate a referendum on an advisory question of public policy.

Section 28-1 of the Code (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-1) provides that "[a]dvisory questions of public policy shall be submitted to referendum pursuant to Section 28-5 or pursuant to a statute which so provides". Section 28-5 (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-5) provides in part:

"Not less than 61 days before a regularly scheduled election, each local election official shall certify the public questions to be submitted to the voters of or within his political subdivision at that election which have been initiated by petitions filed in his office or by action of the governing board of his political subdivision.

* * *

"

(Emphasis added.)

There are other provisions in article 28 of The Election Code which also address circumstances in which an advisory question referendum is initiated by the governing body of a unit of local government. (See, e.g., Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-2.) The meaning of particular statutory provisions, however, must be derived from an evaluation of the statute as a whole; each provision should be construed in connection with every other section and in light of the statute's general purpose. (Miller v. Department of Registration and Education (1979), 75 Ill. 2d 76, 81.)

Section 28-5 specifies the time periods in which local election officials must certify the public questions to be submitted to the voters of a political subdivision, the requisite contents of such certification and the other procedures to be followed in submitting a public question referendum to voters, when the public question has been initiated by petition or by action of the governing body of a political subdivision. Similarly, section 28-2 of the Code (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-2) specifies the time periods within which public question referenda must be initiated, whether done by resolution or ordinance or by petition. Compare with these essentially procedural statutory provisions, section 28-6 of the Code (Ill. Rev. Stat. 1982 Supp., ch. 46, par. 28-6) which provides:

"On a written petition signed by 25% of the registered voters of any municipality, township, county or school district it shall be the duty of the proper election officers to submit any question of public policy so petitioned for, to the electors of such political subdivision at any regular election named in the petition at which an election is scheduled to be held throughout such political subdivision under Article 2A. Such petitions shall be filed with the local election official of the political subdivision or election authority, as the case may be. Local questions of public policy authorized by this Section * * * shall be advisory public questions, and no legal effects shall result from the adoption or rejection of such propositions."
(Emphasis added.)

Section 28-6 is plainly a substantive grant of authority which authorizes and requires the submission of advisory public ques-

tions to voters if initiated by a petition that complies with the requirements of article 28 of the Code. In contrast, section 28-5 and the other procedural provisions noted above cannot be construed as an independent grant of authority which satisfies the requirement of section 28-1 that the method of initiating the submission of a public question "* * * shall be as provided by the statute authorizing such public question, or as provided by the Constitution". (Emphasis added.) (See 1981 Ill. Att'y Gen. Op. 86, 87.)

The conclusion reached herein is in accordance with opinion No. S-1105, issued by Attorney General Scott on June 11, 1976. (1976 Ill. Att'y Gen. Op. 205.) The issue addressed therein was whether a county board may by resolution place before the voters of the county the question of whether the county board should enact a county zoning ordinance. After noting that nothing in the constitution, The Election Code, or the statute relating to county zoning required or authorized the approval of county voters in zoning matters, my predecessor determined that a county board may not on its own initiative place such an advisory referendum on the ballot.

For the foregoing reasons, it is my opinion that the county board of a non-home-rule county may initiate referenda on advisory questions of public policy only when express constitutional or statutory authority exists for such action; in the absence of such authority, such referenda may be initi-

Honorable Gary L. Peterlin - 8 -

ated only by petition as prescribed in section 28-6 of The
Election Code.

Very truly yours



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