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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

July 15, 1976

NO. S-1126

CONSTITUTION:
Authority of County
Board to Create Offices

Honorable Hugh Finson
State's Attorney of Piatt County
Courthouse
Monticello, Illinois 61856

Dear Mr. Finson:

This is in response to your question regarding the validity of the creation by the Piatt County Board of the office of county death investigator. Your letter states that by county-wide referendum on April 4, 1972, Piatt County eliminated the office of coroner of Piatt County. The only language used on the referendum ballot was: "Shall the Office of Coroner of the County of Piatt, State of Illinois be eliminated", with appropriate spaces for voting yes or no.

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Whether another county officer would assume the coroner's duties was not part of the referendum. You further state that the county board adopted a resolution whereby the office of "death investigator" was created and vested with the common law and statutory duties and powers of coroner. The ordinance provides for appointment of the "death investigator" who shall hold office for two years. You ask whether the creation of the office of county death investigator is valid under the Illinois Constitution of 1970, and whether the death investigator may lawfully perform the duties of coroner as described in "AN ACT to revise the law in relation to coroners". Ill. Rev. Stat. 1975, ch. 31, pars. 1 et seq.

The problem raised by your request concerns an interpretation of section 4(c) of article VII of the Illinois Constitution which provides:

"(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. Offices 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

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terms of office and manner of selection changed by county ordinance."

In opinion No. S-275 (1971 Ill. Att'y. Gen. Op. 34) I advised that under this provision the office of coroner may be eliminated or the term of office and manner of selection of the coroner changed by county-wide referendum. Thus, there was clear authority for the county to eliminate the office of coroner by referendum.

Under this constitutional provision the county board may also create offices. See People ex rel. Hanrahan v. Beck, 54 Ill. 2d 551 at 566, where the court said that section 4(c) permits the creation of other offices to deal with the myriad complex problems of local government. Thus, the problem raised by your request is not whether the county board can create an office.

Although it may generally be said that an office may be created by county ordinance, the critical problem in this instance is caused by the method followed by the Piatt County Board in creating the office of "death investigator". After the county electorate abolished the office of coroner by referendum, the county board, in substance, merely resurrected that office under a different name. There was no sub-

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stantive change in the nature of the powers, duties and functions of the office.

The problem was compounded by the county board's action in altering the manner of selection of coroner from election to appointment and the term of office from four years to two years. As advised in my opinion No. NP-355, issued October 6, 1971, under section 4(c) of article VII the term of office and the manner of selection of coroner may not be changed by county ordinance. It would require a referendum or legislation to accomplish such an objective.

In opinion No. NP-355, I also advised that the term "officer" used in the first sentence of section 4(c) refers to officers other than coroner, recorder, assessor and auditor. Consequently, it is implicit that such offices may not be created by county ordinance. Because the office of coroner was initially created by the Illinois Constitution, and because there is no authority to create this office by county ordinance, it follows that once this office is abolished by referendum, the county board has no power to recreate it by ordinance.

For these reasons I am of the opinion that the office of death investigator was invalidly created, and that in accordance with the county-wide referendum the office of coroner is eliminated. There is no authority for the county board

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after such a referendum to recreate that office under a different name. This opinion should not be construed, however, to mean that a county board could not create an office of medical examiner or other office which performs some of those duties previously performed by a coroner. The facts of the situation presented in your request are that the county board simply recreated the office of coroner with all the existing duties and merely changed the name.

Very truly yours,

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