



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 91-004

COUNTIES:
Election of County Board
Members at Large by District

Honorable Wayne Morris
State's Attorney, Hamilton County
Hamilton County Courthouse
McLeansboro, Illinois 62859

Dear Mr. Morris:

I have your recent letter regarding whether, by referendum, it may be provided for the at large election of county board members from within districts. For the reasons hereinafter stated, it is my opinion that subsection 3(b) of article VII of the Illinois Constitution and section 2-3002 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 2-3002) do not permit such a method of election.

You have stated that in 1986 a petition was filed with the Hamilton County Clerk seeking a referendum on the question:

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Shall Hamilton County Board Members be elected at large?". The question printed on the ballot pursuant to the petition, however, was: "Shall the County Board members of the five districts of Hamilton County be elected by all registered voters of the County? (At Large)". The proposition, as submitted was approved. As a result, the county clerk has continued to classify the board members by district, with all registered voters casting votes for the candidates in all districts, and being instructed to vote for one candidate in each district.

Article VII, subsection 3(b), of the Illinois Constitution of 1970 provides:

" * * *

(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.

* * *

"

The General Assembly has provided methods for the election of county board members in township counties in section 2-3002 of the Counties Code, which provides, in part:

"* * * By July 1, 1971, and each 10 years thereafter, the county board of each county having a population of less than 3,000,000 inhabitants and the township form of government shall reapportion its county * * * The county board shall also determine whether board members shall be elected at large from the county or by county board districts.

* * *

"

(Emphasis added.)

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At the time that the 1970 Constitution was drafted, there was a similar statutory provision in effect (see Ill. Rev. Stat. 1969, ch. 34, par. 832). Subsection 3(b) of article VII was originally designated as section 6.3 by the local government committee. In explaining the draft section to the Convention, Delegate Anderson stated:

" * * *

Section 6.3. "The General Assembly shall provide plans for election of county board members." * * * The reapportionment statute has provided * * * that all of the counties under township organization will hereafter have to elect their county boards on-either at large or from multimember or singlemember districts of equal population, so in actual fact the General Assembly has already provided plans of election for the township counties * * *

* * *

(IV Record of Proceedings, Sixth Illinois Constitutional Convention 3227) (Emphasis added.) "

The language of the current statute and the expressed intent of the drafters of the Constitution is consistent. County board members may be elected either at large or from single member or multimember districts. There is no provision for at large election from districts.

Article VII, subsection 7(2) of the Constitution provides that a county may, by referendum, change its form of government. However, the debate on the local government article, of which the passage quoted above is a part, leaves no doubt that the form of government chosen must be one of those

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which has been provided for by statute. A non-home rule unit may not, by referendum, adopt a form of government which is not authorized by either the Constitution or by statute. See, League of Women Voters v. County of Peoria (1987), 121 Ill. 2d 236, 242-43; see also VII Record of Proceedings, Sixth Illinois Constitutional Convention 1665-1667, 1693-1697.

In conclusion, it is my opinion that county board members may not be elected at large from districts, but must, in accordance with the Constitution and the Counties Code, be elected either at large or from within districts. Accordingly, in view of the referendum question as stated in the petition signed by the voters and as printed on the ballot, both of which referred to "at large" election by "all registered voters", it is my opinion that Hamilton county has abolished county board districts and must henceforth elect county board members at large without regard to districts.

Very truly yours,



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