



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

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**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 97-028

MUNICIPALITIES:  
Transfer of Appointment Power  
from Mayor to City Council

The Honorable Marty Butler  
Chairman, Local Government and  
Elections Committee  
State Senator, 28th District  
800 East Northwest Highway, Suite 102  
Mount Prospect, Illinois 60056

Dear Senator Butler:

I have your letter wherein you inquire whether the city council of a home rule city may, by ordinance, transfer to itself the mayor's power to make appointments to various boards and commissions. For the reasons hereinafter stated, it is my opinion that the proposed transfer of appointment authority would constitute a change in the form of government of the city in question which, pursuant to article VII, section 6(f) of the Illinois Constitution, may be effected only with referendum approval.

There has been a proposal made in a home rule city to abolish various boards and commissions established pursuant to

The Honorable Marty Butler - 2.

statutes which prescribe mayoral appointment of their members, and to recreate similar bodies by ordinances providing for the appointment of their membership by the city council. The city in question operates under the managerial form of government, as provided in article 5 of the Municipal Code (65 ILCS 5/5-1-1 et seq. (West 1996)). With respect to appointments in managerial cities, section 5-3-7 of the Code (65 ILCS 5/5-3-7 (West 1996)) provides:

" \* \* \*

The powers and duties of the manager shall be:

\* \* \*

(2) To appoint and remove all directors of departments. \* \* \*

\* \* \*

(4) If the city or village was subject to the aldermanic form provisions of Article 3 at the time of adoption of this Article 5 to appoint and remove all officers who are not required to be elected by Article 3;

\* \* \*

"

Section 5-3-1 (65 ILCS 5/5-3-1 (West 1996)) provides:

" \* \* \*

If any other acts or any article of this Code, other than Article 3 or Article 4, provides for the appointment of a board, commission or other agency by the mayor or president, such appointments shall be made in [the] manner so provided."

The Honorable Marty Butler - 3.

Section 5-3-6 of the Code (65 ILCS 5/5-3-6 (West 1996)) provides:

"The powers of the council or board shall be purely legislative except as may be otherwise provided by any other act or by any article of this Code other than Articles 3 or 4. The executive and administrative powers conferred on the commissioners by Article 4 shall only be exercised when delegated to the appointive officers provided in this Article 5.

\* \* \*

"

Under these provisions, it is clear that in the managerial form of government, the executive appointment authority reposes in the manager, with respect to most officers and employees, and in the mayor, with respect to boards and commissions designated as being so appointed. The powers of the city council are purely legislative, except to the extent otherwise provided for by statute. The transfer of the executive appointment authority from the mayor to the city council would significantly alter the balance of powers between the executive and the legislative branches of the city government.

Article VII, section 6(f) of the 1970 Illinois Constitution provides, in part:

"

\* \* \*

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as ap-

The Honorable Marty Butler - 4.

proved by referendum or as otherwise authorized by law. \* \* \*

\* \* \*

"

Our courts have held that a change in the balance of powers between the executive and the legislative branches is a change in the form of government that cannot be effected without referendum approval.

For example, in Pechous v. Slawko (1976), 64 Ill. 2d 576, the supreme court considered consolidated cases in which the city council of the city of Berwyn and the village board of the village of Oak Lawn, both of which were home rule municipalities organized under the managerial form of government, sought to transfer from the mayor or the manager to the council or board, respectively, the authority to appoint certain officers or employees. The court held that each of the municipal ordinances challenged was invalid. Under the managerial form, the board of trustees or the city council exercises no power with respect to administration; the powers of the council or board are purely legislative except as may otherwise be provided by statute. Any attempt to alter the relationship between the executive and the legislative authority, to give the board or the council powers of appointment or removal, requires referendum approval.

Similarly, in Dunne v. County of Cook (1987), 164 Ill. App. 3d 929, ordinances by which the county commissioners attempted to empower themselves to hire and fire their own personal

The Honorable Marty Butler - 5.

staff employees, in derogation of the board president's authority, were held unconstitutional. Such ordinances constituted an attempt to alter the form of government without referendum approval. Also held unconstitutional was an attempt by the county board to alter the relationship between executive and legislative authority by changing from four-fifths to three-fifths the majority necessary to override a veto by the board president. Dunne v. County of Cook (1985), 108 Ill. 2d 161.

It has been suggested that a city council can abolish various boards and commissions established in accordance with statutes which specify mayoral appointment, and create similar boards and commissions pursuant to its home rule authority, but provide for council appointment of their membership. This procedure, it is argued, will supersede the provisions of section 5-3-1, which specify mayoral appointment of the membership of such boards and commissions.

Such a procedure was specifically rejected in Pechous v. Slawko. In that case, the Oak Lawn village board had abolished the office of village attorney, appointed by the village manager, and created a position of corporation counsel to be appointed by the board. The court held that, without referendum approval, the ordinances encroached upon the appointive power granted to the village manager by statute, and were therefore invalid. Pechous v. Slawko (1976), 64 Ill. 2d 576, 587.

The Honorable Marty Butler - 6.

A number of cases have been cited in support of this proposition. None of these cases, however, contradicts the rule set out in Pechous v. Slawko. In Paglini v. Police Board (1975), 61 Ill. 2d 233, for example, it was held that the city of Chicago could authorize its police board to appoint hearing officers without referendum approval. Members of the police board, like members of the boards and commissions here under consideration, are not officers in the form and structure of government whose terms of office and manner of selection cannot be altered without a referendum. More importantly, in Paglini v. Police Board, the city council did not attempt to expropriate to itself the power to appoint. The appointment authority remained in the executive agency, whose members were appointed by the mayor.

In Stryker v. Village of Oak Park (1976), 62 Ill. 2d 523, it was held that a home rule municipality could alter the composition of its board of fire and police commissioners. The village's ordinance deviated from the statute in setting out the qualifications for membership on the board. There was, however, no attempt to change the manner of selection of the board members.

In People ex rel. Hanrahan v. Beck (1973), 54 Ill. 2d 561, it was held that a home rule county could transfer powers, duties and functions among county officers. According to the court, determining which duties are to be carried out by which officers is a matter of legislative policy. There was no attempt

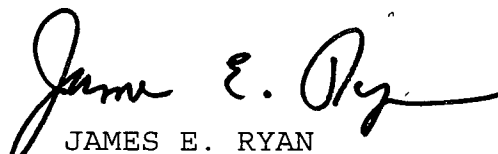
The Honorable Marty Butler - 7.

by the county board, in that case, to expropriate to itself the power to appoint persons to the various offices.

These cases support the general proposition that the city council has the power to create, abolish, change the qualifications for or alter the duties of the various city boards and commissions. In none of these cases, however, was there judicial approval of an attempt by a city council to transfer to itself, without referendum approval and in derogation of the authority of the mayor and the city manager, the power to appoint either officers or employees.

Based upon the cases cited, it is my opinion that the proposed ordinances, in attempting to transfer the mayor's statutory authority to make appointments to the city council without referendum approval, would constitute an impermissible change in the form of government of the city contrary to the requirements of article VII, section 6(f) of the Constitution.

Sincerely,



JAMES E. RYAN  
ATTORNEY GENERAL