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FILE NO. S-668

COUNTIES:
Board Districts
Reapportionment

Honorable Michael M. Mihm
State's Attorney
County of Peoria
Courthouse
Peoria, Illinois 61602

Dear Mr. Mihm:

I have your letter in which you state:

> "The County Board of Peoria County by resolution has described the boundaries of the Districts into which the County has been divided for the purposes of election of members of the County Board. It is necessary to describe the limits and boundaries of these Districts in order to apprise the voters thereof and the creation of polling places.
>
> From time to time, the City of Peoria, primarily, has annexed portions of the unincorporated area of the County to the City. In addition, the City of Peoria has changed the boundaries of a precinct, which in effect, removes a portion of one precinct from one County District to another County District.
>
> Illinois Revised Statutes, Chapter 34, Section 832,

> provides 'by July 1, 1971, and each ten years thereafter, the County Board of each County having a population of less than Three Million inhabitants and the Township form of government, shall reapportion the County, so that each member of the County Board represents the same number of inhabitants.'
>
> We request your opinion as to whether the boundary lines of a District, with a view to annexation and changing of a precinct line within the corporate limits of a municipality, can be changed by resolution of the County Board amending its previously adopted resolution establishing such boundary line or whether the County is prohibited from doing so until 1981?"

Specifically, section 2 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1971, ch. 34, par. 832) states:

> "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 so that each member of the county board represents the same number of inhabitants. In reapportioning its county, the county board shall first determine the size of the county board to be elected, which may consist of not less than 5 nor more than 29 members and may not exceed the size of the county board in that county on the effective date of this Act. The county board shall also determine whether board members shall be elected at large from the county or by county board districts." [emphasis added]

The term "population" is defined in subparagraph c of section 1 of said Act as:

> " * * * [T]he number of inhabitants as determined by the last preceding federal census. * * * "
>
> Ill. Rev. Stat. 1971, ch. 34, par. 631.

Language similar to that emphasized in the Act quoted above was interpreted in the case of People ex rel. Mooney v. Hutchinson, 172 Ill. 486, where the Illinois Supreme Court was asked to decide whether the election of senators and representatives to be held in 1898 was to be held in the legislative districts as created by law, approved and effective in 1893, or as fixed by an amendatory Act approved and effective in 1898. The constitutional provision involved (Ill. Const. 1870, art. IV, sec. 6) provided in part:

> "The General Assembly shall apportion the State every ten years, beginning with the year 1871, by dividing the population of the State, as ascertained by the Federal census, by the number 51, and the quotient shall be the ratio of representation in the Senate. The State shall be divided into fifty-one Senatorial districts, * * * "

The court used two approaches in reaching its conclusion that only one apportionment after each Federal census was permissible. In its first approach, the court relied on the legislative interpretation of past and present constitutional provisions on apportionment. The court noted that under the 1818 Constitution, apportionment was not made to depend upon any subsequent enumeration or event, and the legislators apportioned the State not only after each census, but also during the intervals between censuses. Under the 1848 and 1870 Constitutions, however, apportionment was made to depend on subsequent enumerations, and apportionments were made at the intervals stated, based upon the census taken by the Federal government with no changes made between such periods.

In its second approach, the court interpreted the constitutional language by applying the rules of construction stated at 497-498, those rules being:

> "The general principles governing the construction of constitutions are the same as those that apply to statutes. [citation] The use of negative words would be conclusive of an intent to impose a limitation, and

> they are used in some instances in the constitution, but their absence is not conclusive of the opposite. Where there are provisions inserted by the people as to the time when a power shall be exercised, there is at least a strong presumption that they designed it should be exercised at that time and in the designated mode only, and such provisions must be regarded as limitations upon the power. [citation] If legislative power is given in general terms, and is not regulated, it may be exercised in any manner chosen by the legislature; but where the constitution fixes the time and mode of exercising a particular power it contains a necessary implication against anything contrary to it, and by setting a particular time for its exercise it also sets a boundary to the legislative power. If a power is given and the mode of its exercise is prescribed, all other modes are excluded. [citation] The legislature must keep within the legislative powers granted to it, and observe the directions of the constitution. [citation]"

Upon applying these rules, the court concluded at 501 that:

> "Here there is a general delegation of legislative power, with subsequent provisions giving specific and precise directions to make the apportionment at a particular time and in a designated way, and these, we think, manifest an intention to impose a negative upon the exercise of the power at any other time."

The court, in refuting the argument that a fair construction of the provision in question was that it intended to provide a maximum time, rather than a minimum time which should elapse between apportionments, stated that if such a purpose had been intended, the constitution would have expressed such an intent. The court, in concluding that once the apportionment power had been exercised it was exhausted and would not arise again until the conditions provided for in the constitution again existed, stated at 503-504 that:

> "A subsequent reapportionment based upon the same census, the same division and the same quotient, which it is admitted must be used, would be nothing but reversing the judgment and discretion of that legislature, exercised upon the same facts at the time expressly authorized by the constitution; and we cannot think that it was in the contemplation of those who adopted the constitution that succeeding legislatures should set aside the action of the first by changing and remodeling districts, where no new condition contemplated by the constitution exists."

In my opinion, the above reasoning, as applied to the

relationship between the constitution and legislature, can be transposed to the relationship between the legislation presently in question and county boards. There is no evidence to suggest that this legislation contemplated incorporation of unincorporated areas or changes in precinct boundary lines as conditions which would justify changing and remodeling county districts when a reapportionment after a Federal census has already been made. While it is true that the existence of such a power might correct an inequality of representation caused by such changes, it is important to note as stated by the court in Hutchinson at 504-505, that:

> " * * * [T]he same rule which would permit a correction of inequality would also permit the setting aside of a just and fair apportionment made at the time fixed by the constitution, and the substitution of unjust and oppressive conditions within the latitude allowed by the constitution to the legislature."

The reasoning above and the reasoning in a previous

opinion of mine (Op. NP-380, December 21, 1971) enclosed herein leads me to conclude that the county board of Peoria County may not amend its previously adopted apportionment plan until July 1, 1981.

Very truly yours,

ATTORNEY GENERAL