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FILE NO. S-658

COUNTIES:

Fees and salaries -
Recorder, Auditor and Clerk
of the Circuit Court

Honorable James R. Burgess, Jr.
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Urbana, Illinois 61801

Dear Mr. Burgess:

I have your letter wherein you state:

"On behalf of the Recorder of Deeds, Clerk of the Circuit Court, and County Auditor, your opinion is respectfully requested with regard to the compensation to be paid the aforementioned officers.

Prior to the November 1972 election, the Fees and Salaries Committee of the County Board duly considered the salary to be paid these officers for their term beginning December 4, 1972. Chapter 53, Section 37A of the Illinois Revised Statutes of 1970

Honorable James R. Burgess, Jr. - 2.

provided in pertinent part that the County Board . . . shall fix the compensation of . . . 'Clerks of the Circuit Court, Recorders and Auditors . . . within the following limits . . . not less than \$12,500 per annum and not more than \$17,000 per annum'. Said committee was aware that H.B. 4285 which affected a salary change for the above three offices was pending in the General Assembly. Reportedly the legislature was to re-convene on November 24, 1972 to act upon H.B. 4285 prior to said officials taking office on December 4, 1972.

Said Fees and Salaries Committee recommended to the County Board that salaries of the Clerk of the Circuit Court, Recorder of Deeds and the County Auditor shall be established at \$20,000 per annum for the term beginning December 4, 1972, provided the legislation is approved prior to that date. On November 14, 1972, the County Board approved that recommendation.

The legislature re-convened on November 24, 1972, approved H.B. 4285 and the bill was approved and signed by the Governor on November 30, 1972. H.B. 4285 establishes in pertinent part a salary for these officers at not less than \$12,500 per annum and not more than \$23,000 per annum. P.A. 77-2817.

The salary of \$20,000 per annum for each of the aforementioned officers as conditionally established by the County Board is within the salary range as established by the General Assembly.

Honorable James R. Burgess, Jr. - 3.

A reasonable inference seems to suggest that in their haste of legislation during the five day session, November 24 through November 30, 1972, the legislature inadvertently omitted the effective date of H.B. 4285 of December 1, 1972.

Article 7 Section 9(b) Illinois Constitution of 1970 provides that 'an increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.'

Article 5 Section 10 of the Illinois Constitution of 1970 provides 'the General Assembly shall provide by law for a uniform date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three fifths of the members elected to each House provides for an earlier effective date.'

The consensus of the County Board is that these three officers can only be paid the maximum amount allowed prior to the passage of H.B. 4285, i.e. \$17,000 per annum.

In view of the special session of the legislature prior to December 4, 1972, and the passage of H.B. 4285 prior to the aforementioned officers being sworn into office, may the intended effective date of said act

Honorable James R. Burgess, Jr. - 4.

be construed by implication as December 1, 1972 and the appropriate salaries thereunder paid effective December 4, 1972?

In the alternative, since the salaries of these officers were conditionally fixed at \$20,000 per annum prior to their taking office December 4, 1972, and since that condition precedent was met by the enactment of H.B. 4285 prior to these officers taking office and since the salary as set by the County Board is within the range established by said act, may these officers be paid at the rate of \$20,000 per annum effective July 1, 1973?"

Champaign County has only those expressed powers granted to it by the Constitution or by law plus those powers that are necessarily implied to carry out these expressed powers. (Ill. Const., art. VII, sec. 7; Heidinreich v. Ronske, 26 Ill. 2d 360.) A county is a body corporate and politic, (Ill. Rev. Stat. 1971, ch. 34, par. 301), and its powers are to be exercised by the county board. Ill. Rev. Stat. 1971, ch. 34, par. 302.

Section 1 of An Act in relation to the compensation

Honorable James R. Burgess, Jr. - 5.

of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than 1,000,000 inhabitants (Ill. Rev. Stat. 1971, ch. 53, par. 37a) grants the Champaign County Board the statutory power to set the salary of the auditor, recorder and clerk of the circuit court. Prior to July 1, 1973, said section 1 read, in part, as follows:

"The County Board, in all counties of less than 1,000,000 inhabitants, shall fix the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors, with the amount of their necessary clerk hire, stationery, fuel and other expenses. * * * The compensation of each such officer shall be fixed separately from his necessary clerk hire, stationery, fuel and other expenses, and such compensation shall be fixed within the following limits:

* * *

To each such officer in counties containing 100,000 or more inhabitants but less than 200,000 inhabitants, not less than \$12,500 per annum and not more than \$17,000 per annum. * * * "

Honorable James R. Burgess, Jr. - 6.

Section 1 was amended by House Bill 4285 (P.A. 77-2817). This amendment raised the maximum salary payable to the auditor, recorder and clerk of the circuit court to \$23,000 per annum. House Bill 4285 was passed by the General Assembly on November 28, 1972, and signed by the Governor on November 30, 1972. There was no effective date in the provisions of House Bill 4285.

With regard to the effective date of legislation, section 10 of article IV of the Illinois Constitution of 1970 provides, in part, as follows:

" * * * A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date."

As pointed out earlier, the General Assembly did not provide for an earlier effective date in passing House Bill 4285; therefore, that Bill became effective on July 1, 1973.

You point out in your letter that on November 14,

Honorable James R. Burgess, Jr. - 7.

1972, the Champaign County Board set the salaries of these three officers at \$20,000 per annum. At this time, the board had only the statutory authority to set the salaries of these officers at a maximum of \$17,000. Thus, the salary of \$20,000 was ultra vires and these officers could be paid, at most, \$17,000 per annum.

The terms of these officers began on December 4, 1972. Once the terms of the auditor and recorder began, they could not receive a pay increase or decrease during the remainder of their terms of office.

Section 9(b) of article VII of the Illinois Constitution of 1970 reads as follows:

"An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Both the auditor and recorder are elected county officers (Ill. Const., art. VII, sec. 4(c)); therefore, they are officers of a unit of local government and the proscriptions of section 9(b) of article VII are applicable to these officers.

Honorable James R. Burgess, Jr. - 8.

Recently, I have issued an opinion (S-639) dated October 26, 1973, wherein I held that the clerk of the circuit court is a non-judicial officer of the judicial branch of State government. He is not a county officer; therefore, he is not an officer of a unit of local government and, thus, his salary is not subject to regulation by section 9(b) of article VII.

House Bill 4285 which authorizes the Champaign County Board to pay the clerk of the circuit court a minimum salary of \$12,500 per annum and a maximum salary of \$23,000 per annum did not become effective until July 1, 1973. Until this time, the most a clerk of the circuit court could receive in salary was \$17,000 per annum. Now, of course, the county board is free to raise or lower the salary of the clerk of the circuit court anywhere between the minimum and maximum amounts as set by House Bill 4285.

In direct answer to your first question, the effective date of House Bill 4285 was July 1, 1973.

Honorable James R. Burgess, Jr. - 9.

As to your second question, on November 14, 1972, when the county board set the salaries for these three officers at \$20,000 per annum, their action was ultra vires because the maximum salary allowable to these officers at that time was \$17,000. On December 4, 1972, the terms of these officers began and the proscription of section 9(b) of article VII became applicable freezing the salary of the auditor and recorder at \$17,000 per annum for the remainder of their terms of office. However, the salary of the clerk of the circuit court may be raised or lowered pursuant to the statutory authority reflected in House Bill 4285.

Very truly yours,

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