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August 8, 2018

To: UCCI Membership

Re: *County Employee Performance Evaluations*

Issue:

Whether a county board may mandate that all departments, including those of elected officials, require their employees to complete performance evaluations.

Analysis:

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.¹ Non-home-rule units, however, possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.²

A county board may adopt its own personnel policies. However, those personnel policies will not apply to every county employee. The Attorney General has informally commented on these issues, stating that “personnel policies set out in employee handbook[s] have no direct application to ‘officers.’ ”³ It is well-settled that the following county officers have been granted internal control of

¹ Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (2nd Dist. 1994).

² *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (2nd Dist. 1997).

³ 2002 Ill. Att’y Gen. Informal Op. 7.

their respective operations: Circuit Clerk,⁴ Public Defender,⁵ County Clerk,⁶ Treasurer,⁷ State's Attorney,⁸ County Auditor,⁹ County Recorder,¹⁰ County Sheriff,¹¹ or Coroner.¹² As a result, county personnel policies do not apply to these county officers.¹³ Similarly, the application of county personnel policies to the employees of these officers would only be appropriate where supported by another grant of authority such as a statute or case law.¹⁴ As such, a county board has no authority to mandate that these officers require performance evaluations for their employees.

⁴ Exclusive control of the duties and hours of the circuit clerk and his or her employees are that of the court. 2001 Ill. Att'y Gen. Informal Op. 15. Thus, county personnel policies established by a county board shall not control staffing decisions of the circuit clerk and his employees. 2001 Ill. Att'y Gen. Informal Op. 15.

⁵ To subject employees of the public defender to county personnel policies would be violation of the separation of powers doctrine . . . therefore, . . . [C]ounty [B]oard's policies with respect to benefits and leave time may not be made applicable to the staff of the public defender." 2002 Ill. Att'y Gen. Informal Op. 7.

⁶ 55 ILCS 5/3-2003.2 ("The County Clerk shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office.").

⁷ 55 ILCS 5/3-10005.1 ("The treasurer shall control the internal operations of his office and procure necessary equipment, materials and services to perform the duties of his office.").

⁸ 55 ILCS 5/3-9006 ("Internal operations of office. The State's Attorney shall control the internal operations of his or her office and procure the necessary equipment, materials and services to perform the duties of that office.").

⁹ 55 ILCS 5/3-1004. ("The County Auditor shall control the internal operations of the office and procure equipment, materials, and services necessary to perform the duties of the office, subject to the budgetary limitations established by the County Board.").

¹⁰ 55 ILCS 5/3-5005.2 ("The recorder shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office. The Recorder shall have the right to select the computer or micrographic system to be used for document storage and retrieval. The Recorder may retain the services of management or consulting firms to establish or maintain such a system.").

¹¹ 55 ILCS 5/6-6018 ("Counties under 1,000,000; control of internal operations. In counties of less than 1 million in population, the sheriff shall control the internal operations of his office. Subject to the applicable county appropriation ordinance, the sheriff shall direct the county treasurer to pay, and the treasurer shall pay, the expenditures for the sheriff's office, including payments for personal services, equipment, materials and contractual services. Purchases of equipment by the sheriff shall be made in accordance with any ordinance requirements for centralized purchasing through another county office or through the state which are applicable to all county offices.").

¹² 55 ILCS 5/3-3003 ("The County Coroner shall control the internal operations of his office. Subject to the applicable county appropriation ordinance, the coroner shall procure necessary equipment, materials, supplies and services to perform the duties of the office. Compensation of deputies and employees shall be fixed by the coroner subject to budgetary limitations established by the county board. Purchases of equipment shall be made in accordance with any ordinance requirements for centralized purchasing through another county office or through the State which are applicable to all county offices.").

¹³ 2002 Ill. Att'y Gen. Informal Op. 7.

¹⁴ *Id.*

With regard to the head of county government departments, county board personnel policies do not apply to the Supervisor of Assessments¹⁵ or the County Superintendent of Highways/County Engineer¹⁶ as “[t]hese are officers whose duties, as well as selection and compensation, are determined by statute.”¹⁷ Note, however, that the Attorney General has informally opined that “[b]ecause county engineers and appointed supervisors of assessment have not been granted internal control of their offices”, “it appears that the county may apply its personnel policies to the employees of those officers.”¹⁸ The Attorney General has further informally opined that “[o]ther county departments may be organized at the discretion of the County Board, and persons may be selected to staff them on the terms the County Board may specify.”¹⁹ “The County Board may, by ordinance, provide that such positions are county offices.”²⁰ “However, any position not created as an office by either a statute or an ordinance is a position of employment, to which personnel policies may be made applicable.”²¹ Thus, it would appear that county positions which are not created as an office by statute or ordinance are considered a position of county employment and, as such, are likely subject to personnel policies established by the county board.

Conclusion:

In sum, it is the opinion of this office that a county board may not mandate that departments run by elected officials require their employees to complete employee evaluations. County

¹⁵ See 35 ILCS 200/3-5 (selection of supervisor of assessments); 35 ILCS 200/3-40 (compensation of supervisor of assessments).

¹⁶ 605 ILCS 5/5-201 (selection of county superintendent: in counties with a population less than 3,000,000.); 605 ILCS 5/5-202 (compensation of county superintendent: the salary is fixed by the County Board and “shall also be allowed his actual traveling and other expenses incurred in the discharge of the duties of his office, his salary and expenses to be payable out of any general or highway funds of the county. The County Board shall provide all equipment and personnel reasonably required by the county superintendent of highways in the discharge of the duties of his office.”).

¹⁷ 2002 Ill. Att’y Gen. Informal Op. 7 (like other county officers, the salary of the supervisor of assessments and county superintendent much be paid without regard to the services actually performed).

¹⁸ *Id.*

¹⁹ *Id.*

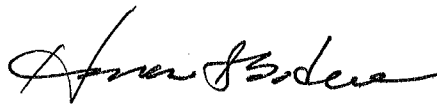
²⁰ *Id.*

²¹ *Id.* (citing Ill. Const. 1970, art. VII, § 4(c)).

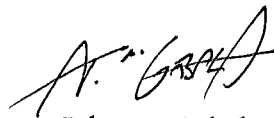
government positions, however, that are not created as an office by statute or ordinance would likely be considered a position of county employment subject to personnel policies established by the county board.

At the request and direction of UCCI this opinion was prepared by

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