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July 18, 2018

To: UCCI Membership

Re: *Requirements for County Advisory Referenda*

Issue:

What are the statutory requirements for non-home-rule counties seeking to initiate advisory referenda on questions of public policy?

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

Section 5-1005.5 of the Counties Code provides that “By a vote of the majority of the members of the county board, the board may authorize an advisory question of public policy to be placed on the ballot at the next regularly scheduled election in the county.”³ Section 5-1005.5 further provides that “The county board shall certify the question to the proper election authority, which must submit the question at an election in accordance with the Election Code.”⁴ In the case of advisory public questions, the general petition requirements of the Election Code shall control.⁵ We note the

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 55 ILCS 5/5-1005.5.

⁴ 55 ILCS 5/5-1005.5.

⁵ 10 ILCS 5/28-1.

Election Code does not use the phrase “advisory referenda”. Instead, the Election Code employs the phrase “public question”. Section 1-3(15) of the Election Code defines “question of public policy” or “public question” to mean “any question, proposition or measure submitted to the voters at an election dealing with subject matter other than the nomination or election of candidates and shall include, but is not limited to, any bond or tax referendum, and questions relating to the Constitution.”⁶ As such, the phrase public question in this context includes advisory questions of public policy.⁷

Advisory questions of public policy must be submitted to referendum pursuant to Article 28 of the Election Code.⁸ Article 28 of the Election Code, entitled submitting public questions, shall govern the procedures for the initiation and submission of public questions at all regular elections and emergency referendum, including questions initiated by ordinance or resolution of a political subdivision's governing body.⁹ Resolutions or ordinances of governing boards of political subdivisions which initiate the submission of public questions pursuant to law must be adopted not less than 79 days before a regularly scheduled election to be eligible for submission on the ballot at that election.¹⁰ Note that there is no requirement that a county to first submit a resolution to the Board of Elections for certification. The resolution may specify the regular election at which the question is to be submitted, and may not specify an election more than one year after the date of adoption of the resolution.¹¹ Note that if a date is specified, a different election date will not be valid.¹² However, if the resolution does not specify a date for the election, the question is to be

⁶ 10 ILCS 5/1-3 (15).

⁷ See 10 ILCS 5/1-3(15).

⁸ 10 ILCS 5/28-1.

⁹ As well as questions initiated by ordinance or resolution of a political subdivision's governing body, questions initiated by petition, advisory and legally binding questions. 10 ILCS 5/28-1.

¹⁰ 10 ILCS 5/28-2(c).

¹¹ 10 ILCS 5/28-2(d).

¹² 10 ILCS 5/28-2(d).

submitted to referendum at the next regular election occurring not less than 79 days after the adoption of the resolution.¹³ The local election official of the local governing body shall certify the public question to the election authority having jurisdiction over the county where the question will be submitted not less than 68 days before a regular election.¹⁴


Conclusion:

In sum, it is the opinion of this office that a county board may, by ordinance or resolution, initiate referenda on advisory questions of public policy pursuant to Section 5-1005.5 of the Counties Code so long as the procedure is consistent with the relevant provisions of the Election Code concerning the submission of public questions.

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

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Herman G. Bodewes


John M. Gabala

¹³ 10 ILCS 5/28-2(e).

¹⁴ 10 ILCS 5/28-5.