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July 5, 2018

To: UCCI Membership

Re: *Hiring of a single individual to perform the duties of both county zoning officer and animal control administrator.*

Issue:

Whether a county board may hire, as opposed to appoint, the same individual to serve both as the county animal control administrator and the county zoning officer.

Analysis:

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

With regard to the selection of a county zoning officer, section 5-12008 of the Counties Code, provides that county zoning ordinances or resolutions shall be enforced by the officer of the county that is designated by ordinance or resolution.³ This section contemplates the enactment of local zoning rules, which would in turn be enforced by the county zoning officer.⁴ Section 5-12008 does not specify whether hiring or appointment is required; only that the method of installment be achieved through ordinance or resolution. The first part of section 4(c) of article VII of the Illinois Constitution,

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

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

³ 55 ILCS 5/5-12008.

⁴ 55 ILCS 5/5-12008 (“All ordinances or resolutions passed under the terms of this Division shall be enforced by such officer of the county as may be designated by ordinance or resolution.”).

however, provides that in addition to a coroner, recorder, assessor, auditor, a county may either elect or appoint “such other officers as provided by law or by county ordinance”.⁵ As previously stated the Counties Code allows for such installment to take place via ordinance or resolution.⁶ As such, reading section 4(c)’s “as provided by law” language in concert with section 5-12008 of the Counties Code would still allow for installment to be achieved through ordinance or resolution. We note, the first part of section 4(c) could be read to imply that a county zoning officer’s selection would have to occur by election or appointment and not through hiring. However, the remaining part of section 4(c) states that the manner of selection for offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be changed by county ordinance.⁷ Read together, these two passages would appear to allow for either the appointment or hiring of a county zoning officer so long as the method for the manner of installation was established by ordinance. Thereafter, a county zoning officer could be either appointed or hired so long as the county board’s decision in that regard is enacted by an ordinance or resolution. In other words, a county must do what it requires of itself in its own ordinance(s) as it relates to the zoning officer. If a county’s zoning ordinance(s) are silent on how its zoning officer is installed, then that county should consider amending its ordinance(s) to specify whether the officer is to be appointed or hired. Once the method of selection is decided upon and adopted, it should be consistently applied.

With that in mind, we turn our attention to the selection of a county animal control administrator. Pursuant to section 5-1071.1 of the Counties Code, counties may regulate vicious and dangerous dogs in accordance with the provisions of the Animal Control Act.⁸ We note the Animal

⁵ Ill. Const. 1970, art. VII, § 4(c) (emphasis added).

⁶ 55 ILCS 5/5-12008.

⁷ Ill. Const. 1970, art. VII, § 4(c).

⁸ 55 ILCS 5/5-1071.1.

Control Act does not reference a departmental head. Instead, Section 3 of the Animal Control Act, specifically provides that the county board chairman shall appoint an administrator with the consent of the county board.⁹ The Animal Control Act defines the term “administrator” to mean a veterinarian licensed by the State of Illinois and appointed pursuant to the Act.¹⁰ In the event a veterinarian cannot be found and appointed, a non-veterinarian may serve as administrator.¹¹ The administrator may, in turn, appoint as many deputy administrators and animal control wardens as authorized by the county board.¹² Counties may determine the extent of the police powers that may be exercised by the administrator, deputy administrators, and animal control wardens by ordinance.¹³ Notably, however, the Animal Control Act does not provide for the hiring of an administrator; only the appointment of one. Once appointed, the administrator may be removed from office by the county board chairman, with the consent of the county board.¹⁴

Thus, if a county wishes to install the same individual to perform the duties of both county animal control administrator and county zoning officer, the county board would need to do so via appointment for both positions as the Animal Control Act does not provide an alternative installation method of appointment.

Conclusion:

In sum, the county zoning officer may either be hired or appointed depending on what a county has authorized by resolution or ordinance. However, pursuant to the Animal Control Act, the county animal control administrator may only be appointed by the county board chairman with the

⁹ 510 ILCS 5/3.

¹⁰ 510 ILCS 5/2.01.

¹¹ 510 ILCS 5/2.01 (note, however, that if the administrator is not a veterinarian, the administrator shall defer to the veterinarian regarding any medical decisions).

¹² 510 ILCS 5/3.

¹³ 510 ILCS 5/5.

¹⁴ 510 ILCS 5/3.

advice and consent of the county board. Accordingly, if a county board desires to install the same individual to perform the duties of both county animal control administrator and county zoning officer, it is the opinion of this office that the county board would necessarily need to appoint that individual to both positions.

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