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To: UCCI Membership

***Questions***

Are there deadlines for fixing the term of salaries of the County Treasurer, County Clerk, Sheriff and Circuit Clerk?

Can increases in salary be tied to the Consumer Price Index?

Can the County Board set the salary of the new elected Circuit Clerk at a rate lower than the current Circuit Clerk's salary?

***Analysis***

***Deadline to Fix Compensation***

Section 2 of the Local Government Officer Compensation Act provides the following: "Notwithstanding any other law to the contrary, the compensation of elected officers \* \* \* of local government, including home rule units, which compensation is to be fixed by that \* \* \* unit of local government, shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed."<sup>1</sup>

County Clerk, County Treasurer, and Sheriff are not up for election until the general election in 2022 (this assumes there is no vacancy in those offices to be filled during this election).<sup>2</sup> Section 4 of Article VII of the Illinois Constitution provides that the Sheriff, County Clerk and Treasurer are elected officers of the county.<sup>3</sup> Thus, their salaries must be fixed at least 180 days prior to when their term begins. Each of those officers commence their duties on the first day of December on which they are required to be open.<sup>4</sup> By our calculations (and we encourage you to do your own calculation), 180 days before the first day of December which those offices would be

<sup>1</sup> 50 ILCS 145/2.

<sup>2</sup> 10 ILCS 5/2A-16; 10 ILCS 5/2A-19; 10 ILCS 5/2A-17.

<sup>3</sup> Ill. Const. art. VII, § 4.

<sup>4</sup> 55 ILCS 5/3-10001 (County Treasurer); 55 ILCS 5/3-2001 (County Clerk); 55 ILCS 5/3-6002 (Sheriff).

required to be open (December 1, 2022 is on a Thursday) is approximately June 4, 2022. Therefore, any increase or decrease to the salaries of those officials for terms commencing in December 2022 must be adopted on or before June 4, 2022. Moreover, as you know, the Illinois Constitution prohibits increasing or decreasing the salary of an elected official after the term has commenced.<sup>5</sup> However, as will be discussed below, the Circuit Clerk is not a county official.

### *Can Increases Be Tied to Consumer Price Index*

The Illinois Attorney General has opined Illinois Supreme Court decisions “would appear to permit self-executing cost of living increases made by reference to objectively determinable and extraneous standards, such as Federal indices, it is equally clear that they render impermissible and unlawful salary increases involving discretionary action by the county board.”<sup>6</sup> Thus, as long as the mechanism for an increase was fixed and set in place prior to the 180-day deadline discussed above, it would appear to be permissible as long as there was no discretion for the board to allow or deny the increase or decrease.

### *Can the County Board set the salary of the new elected Circuit Clerk at a rate lower than the current Circuit Clerk’s salary?*

The Illinois Supreme Court has held that “under our constitution of 1970 the clerks of the circuit courts in this State are not county officials, but are nonjudicial members of the judicial branch of State government.”<sup>7</sup> While not addressed by the Illinois Supreme Court, the Attorney General has specifically opined that circuit clerks are not subject to the prohibition found in Article VII, Section 9(b) of the Illinois Constitution banning increases or decreases in salary during a circuit clerk’s term of office.<sup>8</sup> Because circuit clerks are not county officials, but rather nonjudicial officers of state government, it is this office’s opinion that the Local Government Compensation Act’s requirement that an officer’s compensation be fixed 180 days before they take office does not apply. Therefore, it is this office’s opinion that the county board can set the salary for the Circuit Clerk who will be elected at this year’s general election at an amount less than what the current Circuit Clerk’s salary is as long as the board sets a salary that meets the minimum levels set forth in section 27.3 of the Clerk of Courts Act.<sup>9</sup>

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<sup>5</sup> Ill. Const. art. VII, § 9(b) (“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”).

<sup>6</sup> Ill. Att’y Gen. Op. S-1006, at pgs. 8-9 (December 5, 1975).

<sup>7</sup> *Drury v. McLean Cty.*, 89 Ill. 2d 417, 420 (1982)

<sup>8</sup> Ill Att’y Gen. Op. No. S-639 (October 26, 1973) (stating “A circuit court clerk is a non-judicial officer of the judicial branch of state government. Therefore, the provisions of section 9(b) of article VII of the Illinois Constitution of 1970 do not apply to the circuit court clerk.”); see also Ill. Att’y Gen. Op. No. S-864 (Feb. 4, 1975) (stating that constitutional prohibition in Article VII, Section 9(b) does not apply to circuit clerks because they are not officers of a unit of local government)

<sup>9</sup> 705 ILCS 105/27.3

**Conclusion**

For the reasons stated, it is this office's opinion that any increase or decrease in salary of the County Treasurer, County Clerk, and Sheriff are required to be fixed at least 180 days prior to the day those officers would commence their terms. It appears that increases or decreases in salary tied to the Consumer Price Index are permissible so long as the standard is fixed 180 days prior to their terms commencing and such increase or decrease is fixed and self-executing and not discretionary. Additionally, because the Circuit Clerk is not a county officer, Article 7, Section 9(b) of the Constitution and Section 2 of the Local Government Officer Compensation Act do not apply. Therefore, the Circuit Clerk's salary for the winner of the 2020 General Election can be set lower than the current Circuit Clerk's salary as long as it meets the requirements of Section 27.3 of the Clerk of Courts Act. However, we caution against setting salaries based upon who is expected to win an election or based upon experience. The duties of elected offices, including the office of Circuit Clerk, are set by statute and those officers are paid for the performance of the duties associated with and mandated for that office, not for the experience of the particular individual who holds the office.

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