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April 9, 2018

To: UCCI Membership

Re: **Circuit Clerk Vacancy & Salary Reduction**

Issue:

Can the county board lower the salary of the person it appoints to fill the office of circuit clerk?

Analysis:

When a vacancy occurs in the office of clerk of the circuit court, the vacancy is filled pursuant to the section 25-11 of the Election Code.¹ Here, the question posed is whether the person appointed to fill the position is required to receive the same salary as the person who resigned was receiving or if the county board can lower the salary. Without stating so, the requester appears to be concerned about (1) the constitutional prohibition found in the Article VII, Section 9(b) of the Illinois Constitution of 1970² against an increase or decrease in the salary of an elected officer of any unit of local government taking effect during the term for which that officer is elected and (2) the requirement in Section 2 of the Local Government Compensation Act³ that the compensation of elected officers units of local government, which provides compensation that is to be fixed by a 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.

However, circuit clerks are not county officials or county employees. Rather, the circuit clerk is a nonjudicial officer of the judicial branch of state government. Article VI, section 18, of the Illinois Constitution of 1970⁴ provides:

(a) The Supreme Court and the Appellate Court Judges of each Judicial District, respectively, shall appoint a clerk and other non-judicial officers for their Court or District.

¹ 10 ILCS 5/25-11.

² Ill. Const. art. VII, § 9.

³ 50 ILCS 145/2.

⁴ Ill. Const. art. VI, § 18.

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.


The Illinois Supreme Court has stated 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.”⁵ 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.⁶ Additionally, 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.

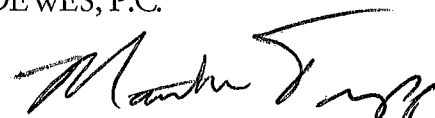
We are not aware of any prohibition on increasing or decreasing the circuit clerk’s salary during his or her term of office.

Conclusion

It is our opinion that the prohibition contained in the Illinois Constitution against increasing or decreasing a unit of local government’s officer’s salary during his or her term of office and the requirement in the Local Government Compensation Act that a local government official’s salary be set 180 days prior to taking office do not apply to circuit clerks because the circuit clerk is not an officer of a unit of local government. Instead, the circuit clerk is a non-judicial officer of state government. Thus, as long as the county board sets a salary that meets the minimum levels set forth in section 27.3 of the Clerk of Courts Act⁷, which are based upon a county’s population, it is our opinion that the salary of the person appointed to fill the vacancy can be decreased from the amount of salary that the former circuit clerk who resigned was receiving.

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.


Herman G. Bodewes


Matthew R. Trapp

⁵ *Drury v. McLean Cty.*, 89 Ill. 2d 417, 420 (1982); see also *Kane Cty. v. Carlson*, 116 Ill. 2d 186, 200 (1987) (stating “[t]he circuit clerk is a nonjudicial officer of the judicial branch of government”).

⁶ *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).

⁷ 705 ILCS 105/27.3.