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September 19, 2017

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(1892-1966)

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(1904-1980)

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(1921-2013)

Mr. Michael McCreery
United Counties Council of Illinois
217 East Monroe Street, Suite 101
Springfield, IL 62701

Re: Public Act 100-0001

Dear Mike:

Issue:

Public Act 100-0001, Effective June 9, 2017, known as the "Bail Reform Act of 2017", expands the provisions of the Criminal Code providing that a person charged with an offense shall be allowed counsel at the hearing in which bail is determined, and if the person charged is unable to obtain counsel, then the court is required to appoint a public defender or licensed attorney. A question has arisen as to whether an obligation exists on the State of Illinois to make available funding to counties to meet the additional obligations imposed by Public Act 100-0001.

Analysis:

The General Assembly has broad discretion in enacting legislation protecting the rights of the accused and the protection of crime victim rights. The "Bail Reform Act of 2017" may impose a burden upon the counties to the extent of potentially requiring additional personnel in the form of public defenders and/or contractual licensed attorneys necessary to cover the additional court appearances. The General Assembly's failure to consider additional funding options or resources for the counties, to administer the potential expanded obligations does not affect the validity of the law. We are unaware of any judicial decisions whereby the court has invalidated or impaired a public act due to potential inadequate funding. In fact, these types of legislation are common place and referred to as unfunded mandates.

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Conclusion:

The General Assembly has historically enacted legislation impacting units of local government resulting in increased costs to units of local government. The authority of the General Assembly with respect to public safety measures is extremely broad and generally protected from judicial interference unless it is clear that the legislative enactment violated applicable Constitutional provisions.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.


Herman G. Bodewes

HGB:pa

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.