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April 27, 2021

To: UCCI Membership

Re: Removal of Board Member due to Residency

Question

If a current county board member has announced that he was moving to another state, the board member changed his voter registration and residency to the other state, then can such a board member be removed from the county board?

Analysis

Section 25-2 of the Election Code provides a list of events upon which an elective office becomes vacant. Specifically, Section 25-2¹ states, in relevant part, the following:

Every elective office shall become vacant on the happening of any of the following events before the expiration of the term of such office:

* * *

(4) His or her ceasing to be an inhabitant of the State; or if the office is local, *his or her ceasing to be an inhabitant of the* district, *county*, town, or precinct *for which he or she was elected.*

The Attorney General has opined that “although the term ‘inhabitant’ does not necessarily mean the same as ‘resident’, for all practical purposes the terms are synonymous, at least as the term is used in this statute. If, therefore, a county board member moves his household permanently out of the district from which he was elected, he ceases to be an inhabitant of that district and there is a vacancy in office.”² Thus, under the factual scenario presented in the inquiry, there is a vacancy in office because the county board member has announced that he was moving to another

¹ 10 ILCS 5/25-2 (Emphasis added).

² Ill. Att’y Gen. Op. No. S-534, at pgs. 4-5 (November 9, 1972).

state, has become a resident of that other state, and registered to vote in that other state. Therefore, he has ceased to be an inhabitant of the county from which he was elected.

Additionally, Section 2-3015 of the Counties Code provides that “In counties with a population of 3,000,000 or less, no person is eligible to hold the office of county board member or commissioner unless he or she is a legal voter and has been a resident of the county for at least one year next preceding the election.”³ Because the question presented indicates that the board member in question announced he is moving to a different state, registered to vote in that other state, and has become a resident of another state, he would no longer be a legal voter in Illinois. Therefore, he would not be eligible to hold the office of county board member under Section 2-3015.

Conclusion

It is our opinion, that under the facts presented in the inquiry, a vacancy in the office of county board member exists because the county board member in question has ceased to be an inhabitant of the county from which he was elected. Additionally, the county board member is no longer eligible to be a county board member because he is not a legal voter in Illinois.

Section 25-3 of the Election Code provides that “Whenever it is alleged that a vacancy in any office exists, the officer, body, or county board who has authority to fill the vacancy by appointment, or to order an election to fill such vacancy, shall have power to determine whether or not the facts occasioning such vacancy exist.”⁴ Therefore, we would advise that the county board, preferably through the State’s Attorney, notify the board member in question of the possible vacancy and the date the county board will take up the issue and make sure it is on the agenda for that county board meeting. At the county board meeting, the board should lay out its evidence that a vacancy exists. The county board should also give the board member in question the opportunity to present any evidence he may have.

If the county board determines that a vacancy exists, it should follow Section 25-11 of the Counties Code. When a non-home rule county declares that a vacancy exists, Section 25-11 requires notification of the vacancy “be given to the county central committee or the appropriate county board or board of county commissioners district committee of each established political party within 3 days of the occurrence of the vacancy.”⁵ Additionally, “the vacancy shall be filled within 60 days by appointment of the chair of the county board or board of county commissioners with the advice and consent of the county board or board of county commissioners.”⁶

³ 55 ILCS 5/2-3015; see also 55 ILCS 5/2-4010 (also stating the same requirement as to counties not under township organization organized as a commission form of government).

⁴ 10 ILCS 5/25-3(a).

⁵ 10 ILCS 5/25-11.

⁶ 10 ILCS 5/25-11.

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