



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

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FILE NO. 17-001

OFFICERS:
Determining Political Composition
of Board of Review

The Honorable Christopher J. T. Bauer
State's Attorney, Bond County
Bond County Courthouse
Greenville, Illinois 62246

Dear Mr. Bauer:

I have your letter inquiring whether the office of clerk of the circuit court (circuit court clerk) is considered a "county office" for purposes of determining the political composition of a board of review pursuant to section 6-15 of the Property Tax Code (the Code) (35 ILCS 200/6-15 (West 2014)). For the reasons stated below, it is my opinion that the office of circuit court clerk is not a county office within the meaning of section 6-15 of the Code. Accordingly, the composition of the board of review may not be determined based upon the results of an election for circuit court clerk.

BACKGROUND

Bond County is a county under township organization with a population of less than 3,000,000,¹ which does not have an elected board of review. Section 6-5 of the Code (35 ILCS 200/6-5 (West 2014)) governs the selection of the board of review in such counties:

In counties under township organization with less than 3,000,000 inhabitants in which no board of review is elected under Section 6-35 [of the Property Tax Code],² there shall be an appointed board of review to review the assessments made by the supervisor of assessments. When there is no existing appointed board of review, the chairman of the county board shall appoint, with approval of the county board, 3 citizens of the county to comprise the board of review for that county, 2 to serve for a one year term commencing on the following June 1, and one to serve for a 2 year term commencing on the same date. When an appointed board of review already exists, successors shall be appointed and qualified to serve for terms of 2 years commencing on June 1 of the year of appointment and until their successors are appointed and qualified. (Emphasis added.)

Section 6-15 of the Code addresses the political composition of a board of review and provides:

The board of review appointed under Section 6-5 shall consist of 3 members, 2 of whom are affiliated with the political party polling the highest vote for any county office in the county at the last general election prior to any appointment made under this Section. The third member shall not be affiliated with that same

¹Based on 2010 Federal decennial census figures, the population of Bond County is 17,768. See Illinois Blue Book 439 (2013-2014).

²Section 6-35 of the Code (35 ILCS 200/6-35 (West 2014)) applies to counties with 150,000 or more and less than 3,000,000 inhabitants which had an elected board of review on January 1, 1993.

party. Each member of the board of review shall receive an annual salary to be fixed by the county board and paid out of the county treasury.^[3] (Emphasis added.)

According to your letter, at the 2016 General Election in Bond County, all of the county-wide races were uncontested. The candidate for circuit court clerk, a member of the Republican Party, received the highest total number of votes. The candidate for coroner, a member of the Democratic Party, received the next highest total number of votes. You inquire whether the office of circuit court clerk is considered a "county office" for purposes of determining the political composition of the board of review.

³This office construed an earlier version of section 6-15 of the Code to mean that only contested elections should be used in determining the composition of a board of review. *See, e.g.*, 1991 Ill. Att'y Gen. Op. 39, 41 ("the political affiliation of the members of the board of review [must] be based upon a race for a single county office for which there are two or more candidates running"); 1979 Ill. Att'y Gen. Op. 46, 47 (it is necessarily implied that the election used to determine the composition of a board of review must be a contested election). At the time that those opinions were issued, section 6-15 of the Code provided, in pertinent part:

The board of review shall at all times consist of 2 *members affiliated with the political party polling the highest vote for any county office in the county, and one member of the party polling the second highest vote for the same county office* in the county at the last general election in the county prior to the time any appointment is made by virtue of this section. (Emphasis added.) Ill. Rev. Stat. 1989, ch. 120, par. 489; *see also* Ill. Rev. Stat. 1977, ch. 120, par. 489.

Public Act 98-322, effective August 12, 2013, however, deleted the reference in section 6-15 to "the party polling the second highest vote for the same county office[.]" An amendatory change in the language of a statute creates a presumption that it was intended to change the statute as it formerly existed. *People v. McChriston*, 2014 IL 115310, ¶18, 4 N.E.3d 29, 34 (2014), *cert. denied*, 135 S. Ct. 59 (2014), quoting *People v. Jackson*, 2011 IL 110615, ¶18, 955 N.E.2d 1164, 1170-71 (2011). Based upon the deletion of the phrase that had been cited as limiting the application of section 6-15 to contested elections for county offices, it is presumed that the General Assembly intended to allow consideration of the results of both uncontested and contested elections when determining the political composition of a board of review.

ANALYSIS

Circuit court clerks were referred to as county officers in article X, section 8, of the Illinois Constitution of 1870. When the Illinois Constitution of 1870 was amended with the Judicial Article of 1962, effective January 1, 1964, however, clerks were reclassified as "non-judicial officers of the various courts[.]" Ill. Const. 1870, art. VI (amended 1964), §20. This classification was carried forward in article VI, section 18, of the Illinois Constitution of 1970, which provides, in pertinent part:

(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.

(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. (Emphasis added.)

In opinion No. S-639, issued October 26, 1973 (1973 Ill. Att'y Gen. Op. 171), Attorney General Scott was asked whether the circuit court clerk is a county officer for purposes of the limitations on mid-term salary changes set out in the Local Government Article of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, §9(b)). In concluding that the circuit court clerk is not subject to the compensation limitations applicable to officers of units of local government, Attorney General Scott advised that the Judicial Article of 1962 abrogated the classification of the circuit court clerk as a county officer. Drawing support from the debates of

the Sixth Illinois Constitutional Convention, Attorney General Scott concluded that the circuit court clerk "is a non-judicial officer of the judicial branch of state government." 1973 Ill. Att'y Gen. Op. at 175.

The Illinois Supreme Court has similarly concluded that circuit court clerks are non-judicial officers of the judicial branch of State government. *See Walker v. McGuire*, 2015 IL 117138, ¶30, 39 N.E.3d 982, 989 (2015) ("[a]lthough clerks of the circuit courts are officers of the judicial branch of government, they are * * * *nonjudicial* officers" (emphasis in original) and thus are not subject to the judicial fee officer prohibition in article VI, section 14, of the Illinois Constitution of 1970); *Pucinski v. County of Cook*, 192 Ill. 2d 540, 545, 737 N.E.2d 225, 228 (2000) ("clerks of the circuit courts are nonjudicial officers of the judicial branch of state government and not employees of the counties"); *County of Kane v. Carlson*, 116 Ill. 2d 186, 200, 507 N.E.2d 482, 486 (1987) ("[t]he circuit clerk is a nonjudicial officer of the judicial branch of government"); *Drury v. County of McLean*, 89 Ill. 2d 417, 420, 433 N.E.2d 666, 667 (1982) ("[w]e hold 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"). Accordingly, a circuit court clerk is not a county officer, and the election of a circuit court clerk may not be considered an election for a "county office" for purposes of determining the political composition of a board of review under section 6-15 of the Code.⁴

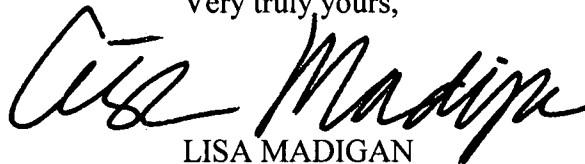
⁴*See also* 1991 Ill. Att'y Gen. Op. at 40 (election of a resident circuit judge could not be used to determine the political composition of a board of review because "resident circuit judges, even though elected within each county, are elected as officers in the judicial branch of State government pursuant to article VI of the Constitution").

The office of county coroner, on the other hand, is clearly a county office. The Local Government Article of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, §4(c)), includes the county coroner among the list of county officers that each county may elect or appoint.⁵

CONCLUSION

It is my opinion that the office of clerk of the circuit court is not a county office for purposes of determining the political composition of the Bond County Board of Review under section 6-15 of the Property Tax Code. Therefore, it will be necessary to base any appointments to the board of review on the results of the election for county coroner.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN
ATTORNEY GENERAL

⁵Article VII, section 4(c), of the Illinois Constitution of 1970 provides:

Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.