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FILE NO. 85-017

ELECTIONS:
Nonpartisan Elections
in Municipalities

Honorable John R. Clerkin
State's Attorney
McDonough County
Macomb, Illinois 61455

Dear Mr. Clerkin:

I have your letter wherein you inquire whether a non-home-rule municipality may, by referendum, provide for the election of city officers on a nonpartisan basis. For the reasons hereinafter stated, it is my opinion that, pursuant to article VII, section 7 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 7), a non-home-rule municipality is empowered to determine the manner of selection of its officers, including whether they should be elected on a nonpartisan basis.

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The factual circumstances which have prompted your inquiry are as follows: The city of Macomb is a non-home-rule municipality operating under the aldermanic form of government. In accordance with the provisions of article VII, section 11 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 11), a referendum was submitted to the city's voters at the November 2, 1982, general election, proposing that municipal elections be conducted on a nonpartisan basis. That proposition received a favorable vote. Subsequently, however, it has been questioned whether a non-home-rule municipality is empowered to provide by referendum for the holding of nonpartisan municipal elections, and thus, whether the referendum in question was effective.

Article 3 of the Illinois Municipal Code (Ill. Rev. Stat. 1983, ch. 24, par. 3-1-2 et seq.), which, inter alia, governs the aldermanic form of municipal government, makes no general provision for the holding of municipal elections on a nonpartisan basis. Rather, section 3-2-2 of the Illinois Municipal Code (Ill. Rev. Stat. 1983, ch. 24, par. 3-2-2) provides that "[t]he schedule, manner of conducting, voting at, and contesting municipal elections shall be as provided in the general election law".

Article 7 of The Election Code (Ill. Rev. Stat. 1984 Supp., ch. 46, par. 7-1 et seq.) establishes the procedure for the making of nominations by political parties. Section 7-1 of The Election Code provides in pertinent part:

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"Except as herein otherwise provided, the nomination of all candidates for all elective * * * city * * * officers, * * * shall be made in the manner provided in this Article 7, and not otherwise. * * * This Article 7 shall not apply to the nomination of candidates for * * * cities, villages, and incorporated towns with a population of 5,000 or less. * * * " (Emphasis added.)

Since the population of the city of Macomb is in excess of 5,000, section 7-1 of The Election Code requires a partisan primary to be held therein unless the referendum in question was effective to alter the manner of holding its municipal elections.

The municipal referendum held in Macomb purportedly was authorized under article VII, section 7 of the Constitution, which provides in pertinent part:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers * * * (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; * * *." (Emphasis added.)

There has been no judicial determination that this grant of power authorizes a non-home-rule municipality to provide by referendum for the election of municipal officers by nonpartisan ballot. In Boytor v. City of Aurora (1980), 81 Ill. 2d 308, however, the Illinois Supreme Court addressed the power of a home rule municipality to provide by referendum for the nonpartisan election of its officers under the closely

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associated language of article VII, section 6(f) of the Illinois Constitution (Ill. Const. 1970, art. VII, § 6(f)).

Article VII, section 6(f) of the Constitution provides in part:

" * * * A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. * * * " (Emphasis added.)

Based upon this language, the court held that a home rule municipality may, by referendum, determine to elect city officers on a nonpartisan basis, stating: "[w]e believe that the power to choose the 'manner of selection' should include the ability to decide by referendum whether the election of the officers should be on a partisan or nonpartisan basis". Boytor v. City of Aurora (1980), 81 Ill. 2d 308, 314.

Although the court in Boytor v. City of Aurora dealt only with the power of home rule municipalities to change the "manner of selection" of their officers, where a term used in the Illinois Constitution has been defined by the courts, sound rules of construction require that the term be given the same definition elsewhere in the instrument unless it is clear that some other meaning was intended. (See Paper Supply Co. v. City of Chicago (1974), 57 Ill. 2d 553, 565; Bridgewater v. Hotz (1972), 51 Ill. 2d 103, 109.) Thus, the term "manner of selection" in article VII, section 7 of the Illinois Constitution should be accorded the same meaning as that term has in article VII, section 6(f) of the Constitution.

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Moreover, in Pechous v. Slawko (1976), 64 Ill. 2d 576, 582-83, the court noted that municipalities which are not home rule units have the same power as home rule municipalities to provide by referendum for their officers, manner of selection and terms of office. (See also Williamson v. Doyle (1981), 103 Ill. App. 3d 770.) Therefore, under the reasoning of Boytor v. City of Aurora, it is my opinion that non-home-rule municipalities also may provide by referendum for the election of municipal officers by nonpartisan ballot.

This interpretation of the language of article VII, section 7, is further supported by reference to the Record of Proceedings of the Sixth Illinois Constitutional Convention. Originally, a single provision was proposed to the delegates of the Convention which would have permitted any unit of "local general government" by referendum to provide "for the number of its officers * * * [and] the manner of selecting them. * * * " (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1665.) The report of the Committee on Local Government stated that the intent of this section was "to give all local governments, through the device of the referendum, plenary control over the number, nature and duties of its [sic] own officers". (7 Record of Proceedings 1667.) This report further stated: "[w]hile flexibility in dealing with officers is primarily important to counties, it may also be useful to

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municipalities to have autonomy in selecting and controlling their own officers". (7 Record of Proceedings 1669.) Although this proposal was ultimately divided and incorporated into two sections of the Constitution, there is no indication that the Constitution's drafters intended to differentiate between the powers of home rule and non-home-rule municipalities to control the method of selection of their officers by referendum.

Therefore, it is my opinion that article VII, section 7 of the Illinois Constitution of 1970, which grants to non-home-rule municipalities the power to provide by referendum for the "manner of selection" of their officers, authorizes a non-home-rule city to determine by referendum to conduct its municipal elections on a nonpartisan basis. Consequently, a favorable vote on such a proposition by the voters of the city of Macomb is effective to provide that the election of its officers be conducted on a nonpartisan basis.

Very truly yours,


A T T O R N E Y G E N E R A L