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FILE NO. S-863

COUNTIES:
County Board - Power of County Board to Retain Legal Counsel

Honorable C. Brett Bode
State's Attorney, Tazewell County
Tazewell County Court House
Pekin, Illinois 61554

Dear Mr. Bode:

I have your letter wherein you state in part:

"At its Annual Budgetary Session recently, the Tazewell County Board enacted an Appropriation Ordinance which provided, in part, the appropriation of the sum of Eight Thousand Five Hundred Dollars ($8500.00) for attorney's fees. This particular appropriation was listed under the budget for the Zoning Department; and I have been advised that the sum is to be used to hire and pay for an attorney to attend and give advice to the County Zoning Board of Appeals and the County Board.

My question is this:

May the County Board appropriate County funds to pay for legal services and advice independent

> of the State's Attorney's office? In other words, may the County Board unilaterally hire independent legal counsel to advise the County Board, its sub-committees, and lawfully established County Committees such as the Zoning Board of Appeals without the express consent and the concurrence of the State's Attorney by way of the appointment of such an attorney as an assistant?"

It is well established in Illinois that a county in addition to its constitutional powers possesses only those powers expressly granted by statute (Ill. Const., art. VII, sec. 1), and those that arise by necessary implication from those powers granted. (Heidenreisch v. Ronske, 26 Ill. 2d 360; Crumpler v. County of Logan, 38 Ill. 2d 146.) I am unable to find any statute which either expressly or impliedly authorizes a county to expend public funds to employ private counsel in the factual situation which you present.

The Illinois Supreme Court has held that the state's attorney is the attorney and legal adviser for the county. Absent specific enabling legislation, a county cannot employ an attorney to render legal advice to the county board or to do legal work for the county. (Ashton v. County of Cook, 384 Ill. 287; Abbott v. County of Adams, 214 Ill. App. 201.) Any contract with a private attorney that was not supported by specific enabling legislation would be ultra vires.

In Ashton v. County of Cook, supra, a case involving a contract between Cook County and a private attorney employed to collect delinquent taxes, the court stated at pages 299, 300:

> "It is alleged in appellants' pleadings that the occasion for employing private counsel was created by the increase of the number of defaults in the payment of taxes and that the State's Attorney did not have the time, in connection with his other duties, to institute such suits. County boards can exercise only such powers as are expressly given by law or such as arise by necessary implication from the powers granted or are indispensable to carry into effect the object and purpose of their creation. (Marsh v. People, 226 Ill. 464; County of Cook v. Gilbert, 146 Ill. 268.) No provision is made in the law which authorizes a board to employ private counsel in collection of delinquent taxes under the emergency pleaded, even though the State's Attorney approves the contracts as to form and gives his silent acquiescence to the procedure adopted. His consent cannot operate to supply the board with a power which the legislature has seen fit to withhold.
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> The law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon

> such officer. (Fergus v. Russel, 270 Ill. 304; Stevens v. Henry County, 218 Ill. 468; Hope v. City of Alton, 214 Ill. 102.) The contracts of employment under which appellants claim were ultra vires and void."

I previously issued opinion No. S-565, March 28, 1973, which held that a county board does not have the authority to hire an attorney to advise the board with regard to establishing a public building commission.

Since the state's attorney is the attorney and legal adviser for a county, a county board cannot hire a private attorney to advise the county board or any other county officers or boards. Any such action by a county board would be ultra vires.

Very truly yours,

ATTORNEY GENERAL