



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 95-013

COUNTIES:
Stormwater Management Committee

Honorable James W. Glasgow
State's Attorney, Will County
14 West Jefferson Street
Joliet, Illinois 60431

Dear Mr. Glasgow:

I have your letter wherein you inquire regarding permissible methods for appointing a stormwater management committee in Will County. For the reasons hereinafter stated, it is my opinion that Will County may choose to form a stormwater management committee either based upon current county board districts or based upon separate districts, as provided by statute.

Section 5-1062 of the Counties Code (55 ILCS 5/5-1062 (West 1994)) authorizes counties in the area served by the Northeastern Illinois Planning Commission to form committees for the purpose of managing and mitigating the effects of urbanization on stormwater drainage. Subsection 5-1062(b) (55 ILCS 5/5-1062(b) (West 1994)) provides:

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(b) A stormwater management planning committee shall be established by county board resolution, with its membership consisting of equal numbers of county board and municipal representatives from each county board district, and such other members as may be determined by the county and municipal members. However, if the county has more than 6 county board districts, the county board may by ordinance divide the county into not less than 6 areas of approximately equal population, to be used instead of county board districts for the purpose of determining representation on the stormwater management planning committee.

The county board members shall be appointed by the chairman of the county board. Municipal members from each county board district or other represented area shall be appointed by a majority vote of the mayors of those municipalities which have the greatest percentage of their respective populations residing in such county board district or other represented area. All municipal and county board representatives shall be entitled to a vote; the other members shall be nonvoting members, unless authorized to vote by the unanimous consent of the municipal and county board representatives. A municipality that is located in more than one county may choose, at the time of formation of the stormwater management planning committee and based on watershed boundaries, to participate in the stormwater management planning program of either or both of the counties. Subcommittees of the stormwater management planning committee may be established to serve a portion of the county or a particular drainage basin that has similar stormwater management needs. The stormwater management planning committee shall adopt by-laws, by a majority vote of the county and municipal members, to govern the functions of the committee and its subcommittees. Officers of the committee shall include a chair and vice chair, one of

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whom shall be a county representative and one a municipal representative.

The principal duties of the committee shall be to develop a stormwater management plan for presentation to and approval by the county board, and to direct the plan's implementation and revision. The committee may retain engineering, legal and financial advisors and inspection personnel. The committee shall meet at least quarterly and shall hold at least one public meeting during the preparation of the plan and prior to its submittal to the county board.

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You have stated that in Will County, Joliet is the only municipality located within county board district 8; the greatest percentage of Joliet's population, however, is concentrated in county board district 9. Therefore, if, for purposes of the appointment of municipal members of the committee, Joliet is considered part of district 9, there will be no municipality in district 8, and, thus, no mechanism for the appointment of a municipal representative. If, contrary to the statutory language, Joliet is considered to be located in district 8, it would effectively appoint its own representative to the committee, while there are other municipalities in district 9 which could select the municipal representative.

While the use of the word "shall" in a statute ordinarily suggests a mandatory construction, it may properly be construed as directory if that construction effectuates the intent of the General Assembly. (Marshall v. Ellison (1985), 132

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Ill. App. 3d 732, 738.) The proper interpretation of a statute cannot be based solely upon its language, but must also consider the nature, object and consequences of construing it one way as opposed to another. (Grove School v. Dept. of Public Health (1987), 160 Ill. App. 3d 937, 941.) A provision in a statute is mandatory if the failure to comply therewith renders the proceeding to which it relates illegal or void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. When the provision merely directs a manner of conduct for the guidance of public officials, it is generally directory, absent negative language denying the performance if the acts required are not done in the manner designated. A statute will be construed as mandatory, on the other hand, if the conduct specified is necessary to safeguard someone's rights. Shipley v. Stephenson County Elec. Board (1985), 130 Ill. App. 3d 900, 902-03.

The apparent intent of section 5-1062 of the Counties Code is to provide for the creation of a committee with membership equally balanced between county and municipal representatives, as is stated in the first sentence of subsection 5-1062(b). It is that equally balanced group which is entitled to vote on the business of the committee, which may adopt by-laws, and which selects the chair and vice-chair, one of whom must represent each interest. In fact, as originally enacted, the

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section, while requiring equal numbers of county and municipal members, did not specify selection from county board districts; municipal members were to be selected by a convention of all of the mayors in the county. (See Public Act 85-905, effective November 18, 1987.) The district selection method was inserted by amendment the following year. (See Public Act 85-1266, effective August 30, 1988.) The provisions permitting the alternative creation of separate districts for selection of the committee were added by Public Act 86-301, effective August 30, 1989, specifically to permit a more manageable size committee in a county having numerous single member county board districts. (Remarks of Rep. Kirkland, April 11, 1989, House Debate on House Bill No. 338, at 21.)

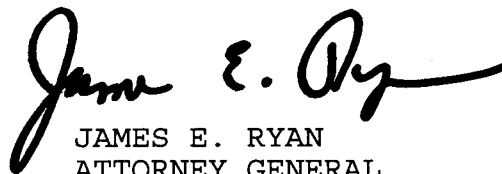
In accordance with the apparent intent of the Act, it is my conclusion that the provision for including a municipality within the county board district in which the greatest percentage of its population resides for purposes of participation in appointment of a representative is directory in nature, rather than mandatory. It is intended for guidance and administrative convenience; failure to comply therewith will not invalidate an appointment.

Therefore, it is my opinion that a stormwater management committee for Will County may be formed based upon county board districts, but permitting the city of Joliet to appoint the

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municipal representative from district 8, in which a large number, although not the greatest percentage, of its population resides. Such a procedure will more nearly comply with the objective of the statute, to provide for equal county and municipal representation, and to have all parts of the county represented, than would an alternative procedure which excludes district 9 from representation. Of course, the county may, if it so elects, utilize the alternative method to form a committee by creation of separate districts.

Sincerely,



JAMES E. RYAN
ATTORNEY GENERAL