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June 12, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN  
(1890-1980)

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(1892-1966)

C. TERRY LINDNER  
(1903-1987)

ALFRED F. NEWKIRK  
(1904-1980)

JAMES M. WINNING  
(1921-2013)

Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Adams Street, Suite 101  
Springfield, IL 62701

**RE: Public Defender: Part-Time to Full-Time**  
**Our File: UNITCC-0601**

Dear Mike:

**Issue**

Is county board approval required to change the office of public defender from part-time to full-time?

**Analysis**

A county with a population of 35,000 or more is required to have a public defender; however, in counties with a population of less than 35,000, there is no requirement that a public defender be appointed.<sup>1</sup> In such counties, the county board may by resolution create the office of public defender in the county.<sup>2</sup> Upon creation of the office in counties with a population of less than 1,000,000, the judges of the circuit court of the circuit in which the county is located must appoint a person to serve as the public defender by a majority vote of the entire number of judges.<sup>3</sup>

A public defender serving a county with a population of less than 30,000 may serve part-time provided that his salary is less than 90% of the state's attorney of the county.<sup>4</sup> A full-time county public defender is entitled to compensation which equals at least 90% of the county state's attorney's annual compensation.<sup>5</sup> The public defender's salary is to be appropriated and paid out of the county treasury. The State will provide "66 2/3%" of the public defender's annual salary to be paid monthly

<sup>1</sup> 55 ILCS 5/3-4001 – 4002.

<sup>2</sup> 55 ILCS 5/3-4002.

<sup>3</sup> 55 ILCS 5/3-4004.

<sup>4</sup> 55 ILCS 5/3-4007; See also *Ill. Atty. Gen. Op. No. 95-008* (1995).

<sup>5</sup> 55 ILCS 5/3-4007.

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through the Department of Revenue, subject to appropriation, to the county where the public defender is employed.<sup>6</sup>

Counties are barred from making any additional appropriations after the county budget has been adopted for the year.<sup>7</sup> Subject to a few exceptions, the county board is prohibited from taking any action which would add to the counties expenditures or liabilities for year above the amount which has been provided for in the county's annual budget.<sup>8</sup> An order of the circuit court will not allow for an additional appropriation where no appropriation was made in the original county budget.<sup>9</sup>

### Conclusion

In counties with a population of less than 30,000, the county board is required to pass a resolution to change the office of public defender from part-time to full-time because the county board is the party vested with the authority to create the office. Once such office is created, then it will be the duty of the judges of the circuit court to appoint a qualified individual. In moving from a part-time to a full-time public defender, the county board must recognize that it may not have appropriated sufficient funds to pay the full-time salary of the public defender should one be appointed after the adoption of the annual budget. Where funds have not been sufficiently appropriated to pay such salary, the county board must wait until the next fiscal year to employ the public defender.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Steven A. Milburn

HGB/SAM:tem

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

<sup>6</sup> Funds from the State are paid from the Personal Property Tax Replacement Fund or the General Revenue Fund. 55 ILCS 5/3-4007(b).

<sup>7</sup> 55 ILCS 5/6-1003.

<sup>8</sup> 55 ILCS 5/6-1005.

<sup>9</sup> *Ill. Atty. Gen. Op. No. 87-005 (1987)*.