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June 25, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN  
(1890-1980)

MONTGOMERY S. WINNING  
(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 Monroe Street, Suite 101  
Springfield, IL 62701

**RE: *Funding Additional Assistant Public Defenders***  
***Our File: UNITCC-0601***

Dear Mike:

## Issue

How does a county board fund additional assistant public defenders who are appointed at the discretion of the judges of the circuit court?

## Analysis

In counties with a population of less than 1,000,000, the public defender is empowered to appoint the number of assistants as determined by the judges of the circuit court of the circuit in which the county is located.<sup>1</sup> The judges determine the number of assistants as necessary for the proper discharge of the duties of the office of public defender.<sup>2</sup> The compensation of the assistant public defenders is fixed by the county board and paid out of the county treasury.<sup>3</sup>

Counties are barred from making any additional appropriations after the county budget has been adopted for the year unless the appropriation is necessary to meet an immediate emergency.<sup>4</sup> Additionally, a 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>5</sup> A county board may lease any real or personal property for county purposes from any Public Building Commission or pay any charges upon the county imposed by law without violating

<sup>1</sup> 55 ILCS 5/3-4008.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 55 ILCS 5/6-1003.

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

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this prior appropriation rule.<sup>6</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>7</sup>

**Conclusion**

When the judges of the circuit court determine that an additional assistant public defender is required to discharge the duties of office, they will direct the public defender to appoint such qualified individuals. It will then be the duty of the county board to then fix the compensation of these assistant public defenders and pay them out of the county treasury. If after reviewing the county budget for the current fiscal year, the county board determines that there are insufficient funds available to pay the additional assistant public defenders based on the current appropriations, then no such additional assistant public defender may be compensated until the new fiscal year when new appropriations are made. In the next fiscal year, the county board must appropriate additional funds as required to compensate the additional assistant public defenders. The county board should consult with county budget officials to determine whether or not sufficient funds are available in the current fiscal year to compensate the additional assistant public defenders.

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.

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<sup>6</sup> *Id.*

<sup>7</sup> *Ill. Op. Att'y Gen.* No. 87-005 (1987).