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July 14, 2015

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(1921-2013)

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

RE: County Board Member Removal

Dear Mike:

Question:

Can a County Board member be removed for refusing to attend meetings?

Analysis:

The Election Code sets forth events upon which an elective office becomes vacant as follows: (1) the death of the incumbent; (2) his or her resignation; (3) his or her becoming a person under legal disability; (4) his or her ceasing to be an inhabitant of the * * * county * * * for which he or she was elected * * *; (5) his or her conviction of an infamous crime, or of any offense involving a violation of official oath; (6) his or her removal from office; (7) his or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit or file such oath or bond within the time prescribed by law; and (8) the decision of a competent tribunal declaring his or her election void.¹ The refusal to attend meetings is not addressed by section 25-2.

The Municipal Code sets forth several events upon which elective offices become vacant.² Both of these provisions include abandonment of office as one of those events. Unfortunately, no similar provision exists in the Counties Code.

¹ 10 ILCS 5/25-2.

² See 65 ILCS 5/3.1-10-50 (setting forth events upon which an elective office becomes vacant in municipalities with populations under 500,000) and 65 ILCS 5/3.1-10-51 (setting forth events upon which an elective office becomes vacant in municipalities with populations above 500,000).

We recommend an initial review of the County Board's Rules of Procedure. If the Rules do not address the matter (and Robert's Rules of Order also does not address the matter), then a review of the County Ordinances is recommended to see if the County Board has enacted any ordinances requiring attendance and the possible consequences for failing to do so.

If a county does not have any such ordinances addressing the issue, at the next re-districting the county could require that board member salaries be computed on a per diem basis.³ That way, a board member would only get paid when they attend meetings.⁴ Moreover, "[i]f the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution. Those changes shall not, however, take effect during the term for which an incumbent county board member has been elected."⁵

Notably, section 5-1013 of the Counties Code states that "[i]f any member of the county board of any county in this State shall willfully neglect to perform any of the duties which are or shall be required of him by law, as a member of the county board, he shall, for every such offense, forfeit the sum of \$200, to be recovered in a civil action."⁶ However, we are unaware of any case law interpreting this provision, let alone applying it to a situation where a county board member refuses to attend meetings.

The Illinois Constitution provides no guidance other than in Article VII, Section 3(b), where it says the General Assembly provides the method for election of county board members.

Conclusion:

Neither the Counties Code nor the Election Code provides for the removal of a county board member for refusal to attend meetings. While section 5-1013 provides for a \$200 penalty for every offense where a county board member willfully neglects to perform any duties required by law, no published Illinois cases exist where that statute has been applied.

If a county has no ordinance or rules of procedure addressing the issue, the county board can require that board member salaries be computed on a per diem basis. The board can do this the next time it reapportions the county. The board can also do this before the next reapportionment by resolution or ordinance. However, those changes shall not however, take effect during the term for which an incumbent county board member has been elected.

³ See 55 ILCS 5/2-3008.

⁴ An example of a county that has done this is Boone County. Boone County also requires notice be given to the Chairman for extended absences. A copy of the relevant sections of the Boone County Code is attached. See Sections 2-34, 2-65 and 2-66

⁵ 55 ILCS 5/2-3008.

⁶ 55 ILCS 5/5-1013.

Mr. Michael McCreery

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Please feel free to call if you should have any questions.

Sincerely,

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



Herman G. Bodewes



Matthew R. Trapp

HGB/MRT:pa
Attachment

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.

current revised determination of prevailing rate of wages then in effect shall be attached to all contract specifications.

(d) The county clerk shall mail a copy of this determination to any employer and to any association of employers and to any person or association of employees who have filed their names and addresses requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates.

(Code 1981, § 2-3; Ord. No. 93-24, §§ 1—4, 7-14-1993; Ord. No. 94-17, §§ 1—4, 6-8-1994; Ord. No. 95-20, §§ 1—4, 6-14-1995; Ord. No. 97-24, §§ 1—4, 6-11-1997; Ord. No. 98-18, §§ 1—4, 6-10-1998; Ord. No. 99-17, §§ 1—4, 6-9-1999; Ord. No. 00-13, §§ 1—4, 6-14-2000; Ord. No. 01-13, §§ 1—4, 6-13-2001; Ord. No. 03-25, §§ 1—4, 6-11-2003; Ord. No. 05-36, §§ 1—4, 6-8-2005; Ord. No. 06-29, §§ 1—4, 6-14-2006)

Sec. 2-4. County to provide for public transportation.

The county shall hereby provide public transportation within county limits.

(Code 1981, § 2-4; Ord. No. 97-11, § 1, 3-12-1997; Ord. No. 98-07, § 1, 3-11-1998; Ord. No. 99-15, § 1, 5-12-1999; Ord. No. 00-10, § 1, 5-10-2000; Ord. No. 01-09, § 1, 5-9-2001; Ord. No. 03-07, § 1, 4-9-2003; Ord. No. 05-32, § 1, 5-11-2005; Ord. No. 06-26, § 1, 5-10-2006)

Secs. 2-5—2-30. Reserved.

ARTICLE II. COUNTY BOARD*

DIVISION 1. GENERALLY

Sec. 2-31. Size.

The county board shall consist of 12 members elected as provided by law.

(Res. of 6-14-1971, § 1; Code 1981, § 2-16) 0;3; Power of county board to determine its size, 55 ILCS 5/2-3002.

***Cross references**—Health department created; board of health, § 38-1; historic preservation commission, § 42-26 et seq.; merit commission, ch. 46-51 et seq.; regional planning commission, § 62-26 et seq.; zoning board of appeals, app. A, § 24.1 et seq.; the county board, app. B, § 305.

State law references—County board generally, 55 ILCS 5/5-1004; reapportionment of county board, 55 ILCS 5/2-3002.

Sec. 2-32. To be elected by districts; establishment of districts.

(a) The county board members shall be elected by county board districts.

(b) Three county board districts are hereby established in the county as follows:

- (1) *District 1* shall consist of the townships of Manchester, LeRoy, Caledonia, Poplar Grove, Boone, Bonus, Spring, and Flora.
- (2) *District 2* shall consist of the portion of Belvidere Township lying north and east of Business Route 20, North State Street, and South State Street.
- (3) *District 3* shall consist of that portion of Belvidere Township lying south and west of Business Route 20, North State Street, and South State Street.

(Res. of 6-14-1971, § 2; Code 1981, § 2-17)

Sec. 2-33. Representation of districts.

Four county board members shall be elected from each of the three county board districts to serve on the county board.

(Res. of 6-14-1971, § 3; Code 1981, § 2-18)

State law reference—Power of county board to require board members to be elected from districts, 55 ILCS 5/2-3002.

Sec. 2-34. Compensation; mileage.

(a) The salary to be paid to the county board members shall be computed on a per-meeting basis and fixed at the rate established by county board resolution. Mileage reimbursement to county board members shall be paid at the rate established by county board resolution.

(b) Per-meeting and mileage reimbursement shall be allowed for all board members in attendance at county board meetings and all members of standing committees who are in attendance at regularly scheduled committee meetings of which they are a member.

(c) The county board chairman and members who are the designated representatives to associations of which the county board is a member shall be allowed per-meeting and mileage reimbursement for attendance at regularly scheduled association meetings. Per-meeting and mileage

reimbursement shall also be allowed for the county board chairman and designated representatives in attendance at regularly scheduled meetings of the boards, councils, and commissions enumerated in subsection 2-67(a)(2) and to any member appointed by the county board to a special committee.

(d) Per-meeting and mileage reimbursement for attendance at emergency meetings of the organization described in subsection (c) of this section shall be reviewed retrospectively by the county board upon the request of a county board member.

(Res. of 6-14-1971, § 5; Mo. of 10-8-1980; Code 1981, § 2-19; Ord. No. 84-24, § 1, 9-13-1984; Ord. No. 86-67, 4-9-1986; Ord. No. 91-31, 11-13-1991; Ord. No. 04-27, 5-12-2004; Ord. No. 15-15, 2-9-2005)

0;3; Powers and duties of county boards, 55 ILCS 5/5-1001 et seq.

Sec. 2-35. Duties.

(a) *Budget and appropriation ordinances.* The county board shall prepare and submit a tentative budget and appropriation ordinance, showing the balance on hand in each fund, the anticipated receipts, and the amount of money to be raised by taxation at the October meeting of the board, which ordinance may be revised by the board prior to adoption at a recessed meeting to be held at a convenient date prior to December 1. The annual budget and appropriation ordinance and tax levy shall be made conveniently available to public inspection at least 15 days prior to final action thereon.

(b) *Appointment of committees, boards and commissions.* The board shall appoint such committees, boards, and commissions as are required by the Illinois Compiled Statutes and such other boards or committees as shall be deemed advisable and in the public interest.

(c) *To provide buildings and office space.* The board shall provide such buildings and office space as the county may require, house each elected official as required, and provide such parking area as the board deems advisable.

(d) *Installation of elected officials; bond.* The board shall install each newly elected official, provide an adequate bond at county expense, and release such official upon the expiration of his term when the provisions of the statutes are complied with fully.

(e) *Bond coverage for officers and employees.* The board shall provide, as it deems fit, adequate bond coverage for employees and elected and appointed officials in positions of trust.

(f) *Insurance.* The board shall insure against loss, as it deems fit, all property and equipment belonging to or being used by the county. Each county office or any entity with the responsibility of caring for county property shall submit an inventory of all tangible property, annually, to the appropriate committee.

(g) *Health and welfare services.* The board shall provide such services in the fields of public health and welfare as are required by statute or as the board deems appropriate.

(h) *Taxes.* The board shall establish and implement the assessment policy in the office of the supervisor of assessments for the county, enforce the collection of taxes, and defend the county in tax suits.

(i) *Probation service; provision for dependent children.* The board shall cooperate with the courts in the establishment of a probation service and adequate provision for dependent children.

(j) *Public health and welfare.* As it deems fit, the board shall enact such ordinances for the control of liquor, lodging, recreation, livestock health, rabies control, public health, plats, subdivisions, weed control, garbage disposal, names of streets and highways, and other items as detailed in 55 ILCS 5/1-1001 et seq.

(k) *Finances.* The board shall supervise all purchases, expenditures of all funds appropriated, check the semiannual and annual reports of all appointed and elected officials so required to report, and cause the books, records, and accounts of the county to be audited for each fiscal year by an independent certified public accountant. Such audit shall cover the records and transactions of all funds and accounts of the county and of its

officers and agents. It shall be made in accordance with generally accepted standards of audit procedure. The county board shall establish its overall control of the fiscal affairs of the county through its annual budget and by such other actions as the board shall deem necessary from time to time.

(l) *Filling of committee vacancies.* The chairman of the county board has the authority to fill committee vacancies and committee chairmanships.

(m) *Rules revision.* The chairman of the board from time to time may consider the revision of the rules of the board and committees and may make recommendations to the administrative and legislative committee.

(Res. of 7-11-1979; Code 1981, § 2-20; Ord. No. 84-23, § 2, 9-13-1984)

Secs. 2-36—2-60. Reserved.

DIVISION 2. ORGANIZATION AND RULES

Sec. 2-61. Chairman; vice-chairman.

(a) The county board shall meet and organize by the election of one of its members as chairman who shall serve for two years.

(b) The chairman shall appoint the various committees approved in this division. Committee assignments shall be for a one-year period. A vice-chairman shall also be elected from the membership of the board to serve for two years and to chair any and all meetings in place of the chairman when the chairman is absent. However, if, in the opinion of the majority of the board, the chairman becomes incapacitated and is unable to fulfill the requirements of his office, then the vice-chairman shall serve only for a period of two months. After that time the board shall elect a new chairman to serve during the unexpired portion of the incapacitated member's term. If the vice-chairman is elected chairman, then a vice-chairman also shall be elected.

(c) If the chairman resigns his position, then, as soon as possible, the board shall elect one of its members as chairman, who will serve during the

unexpired term of the former chairman. If the vice-chairman is elected chairman, then a vice-chairman shall also be elected.

(Res. of 7-11-1979; Code 1981, § 2-31)

0;3; Chairman and vice-chairman of county board, 55 ILCS 5/2-1003.

Sec. 2-62. Meetings.

(a) *Organizational.* The organizational meeting shall be held on the first Monday in the month of December and shall be held on the same day in even numbered years. The call for this meeting shall be prepared and notice given by the county clerk.

(b) *Regular and special.* The regular meetings of the county board shall be held in June and September of each year and shall coincide with and be a part of the regular monthly meetings held on the second Wednesday of each month. Special meetings shall be held at the call of the county board, as regulated by the Illinois Compiled Statutes.

(c) *To be open to public.* The county board shall sit with open doors and all persons may attend its meetings, except that the county board may sit in closed sessions when in compliance with state law.

(d) *Time.* All meetings shall begin at 7:00 p.m. on the day set by statute or call except as ordered by the board and shall continue in session until a recess is ordered or an adjournment declared.

(e) *Schedule.* At the beginning of each calendar or fiscal year, the clerk shall prepare and make available a schedule of all the board's regular meetings for such calendar or fiscal year, listing the dates, times, and places of such meetings. If a change is made in regular meeting dates, at least five days' notice of such change shall be given by the clerk by insertion in a publication of general circulation in the county. Notice of such change shall also be posted at the clerk's office. Notice of such change shall also be supplied by the clerk to those local news media which have filed an annual request for notice. In the case of all committees which have a regular meeting date, the county board shall file with the clerk a listing of the dates, times, and places of

those meetings, and the clerk shall make such lists available and give notice of changes in those dates in the same manner as provided in this section for board meetings. In the case of special meetings, rescheduled regular meetings, reconvened meetings, and all other committee meetings, the clerk shall give public notice at least 48 hours before such meetings. Public notice shall be given by posting a copy of the notice at the county clerk's office and, in addition, the clerk shall supply copies of the notice to any local news media that have filed an annual request for such notice. The county board shall be responsible for notifying the clerk for the purpose of notice. As a matter of courtesy, the county board chairman shall be notified of meeting dates prior to scheduling.

(f) *Agenda.* The agenda for meetings of the county board shall be as follows:

- (1) Call to order.
- (2) Roll call.
- (3) Approval of agenda.
- (4) Approval of minutes.
- (5) Report from community agencies.
 - a. Growth Dimensions.
 - b. Council on Aging.
 - c. Other.
- (6) Reports and motions; standing committees.
 - a. Planning, zoning, and building.
 - i. Presentation of petitions.
 - ii. Other motions.
 - b. Finance, taxation, and salaries.
 - c. Roads and capital improvements.
 - d. Health and human services.
 - e. Administrative and legislative.
 - f. City-county coordinating.
 - g. Public safety.
 - h. General consent items.
- (7) Reports and motions; other committees/special committees.
 - a. Board of health.

- b. Extension and education.
- c. Workforce investment board.
- d. Community building.
- e. United Counties Council of Illinois.
- f. Court appointed special advocate.
- g. Citizens corps.
- h. Other committees.

(8) Unfinished business.

(9) New business.

(10) Scheduling of committee meetings.

(11) Executive session (reasons(s) to be so stated).

(12) Adjournment.

(Res. of 7-11-1979; Code 1981, § 2-32; Ord. No. 82-37, §§ 1, 2, 11-10-1982; Ord. No. 83-20, §§ 1, 2, 8-10-1983; Ord. No. 84-23, § 2, 9-13-1984; Ord. No. 87-45, 11-12-1987; Ord. No. 03-42, 12-10-2003; Ord. No. 05-14, 2-9-2005; Ord. No. 06-31, 6-14-2006)
0;3; Regular meetings, 55 ILCS 5/2-1001; special meetings, 55 ILCS 5/2-1002; open meetings, 55 ILCS 5/2-1006.

Sec. 2-63. Rules of procedure.

The following rules of procedure shall govern the actions of the county board:

- (1) When not set aside by special rules of the board, Robert's Rules of Order shall govern the board.
- (2) A majority of the board members shall constitute a quorum for the transaction of business and all questions that arise shall be determined by a majority of those present, except in such cases as is otherwise provided.
- (3) The vote on all propositions to:
 - a. Appropriate money;
 - b. Appeal from the decision of the chairman;
 - c. Approve the annual budget and tax levy;
 - d. Issue bonds;

e. Fix salaries; and

f. Create any contract liability;

shall be by roll call of "ayes" and "nays" requiring a majority for passage, recorded on the record of the meeting. Upon the request of one or more members, the roll shall be called on any other question.

- (4) The vote on all transfers of funds within the county budget and appropriation ordinance and all supplemental appropriations shall be by roll call of "ayes" and "nays" and shall require a two-thirds majority for passage and shall be recorded in the minutes of the meetings.
- (5) Except as specified in this article, all motions may be adopted by a majority voice vote of the members present.
- (6) At the request of the clerk or any board member, any motions or resolutions shall be written before a vote is taken and in all events any amendments of this Code shall be in writing.
- (7) Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote.
- (8) A motion to adjourn is not in order until so declared by the chairman.
- (9) No rule shall be altered or amended except by the vote of two-thirds of the members elect, but the rules may be suspended by a vote of two-thirds of the members of the board present.
- (10) The chairman shall preserve order and decorum and shall decide questions of order, subject to appeal by the board, without debate.
- (11) The county clerk, after each meeting, shall prepare and mail or cause to be delivered a copy of the minutes to each member of the county board and to the state's attorney, administrative coordinator and all county department managers.
- (12) A motion to reconsider any issue that has been voted on by the county board at any of the 12 regularly scheduled monthly

county board meetings or any special county board meeting of the entire county board must be made and voted on at the same meeting that the vote to be reconsidered was taken or at the next regularly scheduled monthly meeting of the county board. If the motion to reconsider is granted at the subsequent meeting, and not the meeting where the vote on the original issue occurred, then the original issue voted on will be automatically tabled to the following month and placed on that meeting's agenda to allow public input for the final vote. All 12 regularly scheduled county board meetings and any special meetings of the entire county board shall be considered separate meetings for purposes of interpreting this ordinance. Any vote on an original issue can be reconsidered only one time.

(Res. of 7-11-1979; Code 1981, § 2-33; Ord. No. 83-20, § 3, 8-10-1983; Ord. No. 95-14, 5-10-1995)

Sec. 2-64. Right to serve on committees.

The right to serve on committees is a privilege which may be denied for cause. Should such cause arise, the county board shall sit as a committee of the whole for the disposition of such charge.

(Res. of 7-11-1979; Code 1981, § 2-34)

Sec. 2-65. Members failing to attend meetings not to be paid.

Members failing to attend the constituted meetings of the county board shall not be paid.

(Res. of 7-11-1979; Code 1981, § 2-35)

Sec. 2-66. Officials to give notice of vacations and extended absences.

As a matter of courtesy, all elected and appointed officials shall notify the county board chairman and chairman of the proper committee as to the dates of vacation time or of any extended absences from their offices for any other reasons.

(Res. of 7-11-1979; Code 1981, § 2-36)