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September 14, 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: *Hiring of Outside Counsel with State's Attorney's Consent*
Our File: UNITCC-0601

Dear Mike:

Issue

Can a county hire an attorney with the State's Attorney's consent to represent the county in law suits or labor issues?

Analysis

The county board does not have the authority to hire outside legal counsel for county-related matters.¹ Additionally, "neither the county board nor any other county officer has the authority to retain counsel or to expend public funds to employ private counsel for such purposes, unless such counsel is designated by the State's Attorney to assist in carrying out his or her duties, or appointed by court to serve as a Special State's Attorney in accordance with section 3-9008 of the Counties Code."² Per statute, the State's Attorney has the duty and exclusive authority to "defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county."³

Conclusion

Any action or proceeding brought against the county or any county officer within their official capacity must first be referred to the State's Attorney's Office as the county's official counsel. The

¹ 55 ILCS 5/3-9005, 55 ILCS 5/3-9008.

² 55 ILCS 5/3-9008, *Ill. Op. Att'y Gen.* No. 97-001 (1997).

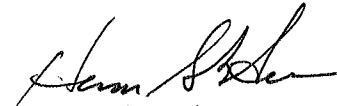
³ 55 ILCS 5/3-9005.

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county board does not have authority to retain outside legal counsel for such matters. However, the State's Attorney has the authority to retain outside counsel when he/she finds it necessary to retain outside counsel to handle a legal issue within the county. Therefore, when a County desires to hire outside counsel it must secure the designation of such counsel from the county's State's Attorney. Under no circumstances should a county board retain outside counsel without such a designation or an appropriate court order.

Sincerely,

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


Herman G. Bodewes


Abby L. Allgire

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.