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October 27, 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: **County Board Member's Seat Declared Vacant**
Our File: UNITCC-0601

Dear Mike:

Issue

Under what circumstances may a county board member's seat be declared vacant based on absence from county board meetings?

Analysis

The Illinois Election Code (the "Election Code") describes specific events on which an elective office will become vacant. An elective office will be deemed vacant if any of the follow occur prior to the expiration of the term of office: (1) death of the incumbent; (2) resignation of the incumbent; (3) the incumbent becoming a person under legal disability; (4) the incumbent ceasing to be an inhabitant of the jurisdiction for which he was elected; (5) the incumbent is convicted of an infamous crime or any offense involving a violation of official oath; (6) the incumbent is removed from office; (7) the incumbent's refusal or neglect to take the oath of office or to give or renew his bond; or (8) a decision of a competent tribunal declaring the election void.¹ The county board has the authority to determine whether or not the facts occasioning a vacancy exist.²

Pursuant to the Illinois Counties Code (the "Counties Code"), county board members are to receive compensation as fixed by the county board by the method selected by the county board.³

¹ 10 ILCS 5/25-2.

² 10 ILCS 5/25-3.

³ 55 ILCS 5/4-10001.

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County board members may be paid on a per diem basis, an annual basis, or a combined per diem and annual basis.

Conclusion

A county board may not declare a county board members seat vacant based on absence from county board meetings. The county board does have the authority to declare a county board members seat vacant under particular factual situations as outlined in the Election Code; however, a county board member's absence from county board meetings is not one of the limited circumstances in which a county member's seat may be declared vacant. If county board members are to be paid on a per diem basis, the county board could deny a county board member who misses a county board meeting his per diem compensation.

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.