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COUNTIES:

**Filling of Vacancies in
County Offices Under Public
Act 79-118 (Senate Bill 463,
79th G.A.)**

**Honorable David DeDoncker
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Dear Mr. DeDoncker:

I have your letter wherein you request an interpretation of section 1 of "AN ACT in relation to the filling of vacancies in county offices". (P.A. 79-118.) The Act was passed on June 27, 1975, as Senate Bill 463, and approved by the Governor on July 8, 1975. Section 10 of the Act provided that it would become effective upon becoming law.

Section 1 provides:

Honorable David DeDoncker - 2.

"Section 1. Section 25-11 of 'An Act concerning elections', approved May 11, 1943, as amended, is amended to read as follows:

When a vacancy occurs in the office of County Commissioner or county board member in any county with a population of less than 3,000,000 the vacancy shall be filled within 60 days by appointment of the county central committee of the political party of which the incumbent was a candidate at the time of his election. The appointee shall be a member of the same political party as the person he succeeds was at the time of his election and shall be otherwise eligible to serve as County Commissioner or county board member. The appointee shall serve until the next election of County Commissioners or county board members in the county. If a vacancy occurs in the office of County Commissioner or county board member, to which the incumbent was elected other than as a candidate of a political party, the presiding officer of the county board, with the advice and consent of the county board, shall within 60 days of the date the vacancy occurs, appoint some person, possessing the qualifications for such office, to serve until the next election of County Commissioners or county board members in the county. In the case of a vacancy in a seat on a county board which has been divided into districts under 'An Act relating to the composition of an election of county boards in certain counties', approved October 2, 1969, as amended, the appointee must also be a resident of the county board district, and the appointment shall be made by the county board district central committee of the political party of which the incumbent was a candidate at the time of his election.

Honorable David DeDoncker - 3.

When a vacancy occurs in any county which is not a home rule unit in any elective county or precinct office at any time before the expiration of the term of such vacant office, such vacancy shall be filled within 60 days by appointment of the county central committee of the political party of which the incumbent was a candidate at the time of his election. The appointee shall be a member of the same political party as the person he succeeds was at the time of his election, and shall be otherwise eligible to serve in the office vacated. The appointee shall serve until the next general, county or precinct election when a successor shall be elected for the unexpired term or a full term as the case may require.

Except as otherwise provided by county ordinance or by law, in any county which is a home rule unit, vacancies in elective county offices, other than the office of chief executive officer, shall be filled by the county board."

Before Public Act 79-118 became effective, section 25-11 of "AN ACT concerning elections", approved May 11, 1943, as last amended by an Act approved June 8, 1965 (Ill. Rev. Stat. 1973, ch. 46, par. 25-11) provided:

"When a vacancy shall occur in the office of County Commissioner in any county with a population of less than 500,000 inhabitants, within one year before the expiration of the term of such vacant office, the vacancy shall be filled by appointment, by the County Board of the county in which the vacancy exists, but if such unexpired term exceeds one year, the County Clerk, shall issue an order appointing a day for an election to fill such vacancy and cause notice thereof to be given as in other cases of election:

Honorable David DeDoncker - 4.

Provided, that when a vacancy shall occur in the office of Sheriff, Coroner, Recorder of Deeds, County Treasurer, State's Attorney, County Clerk, or other county or precinct officer not otherwise provided for by law, at any time before the expiration of the term of such vacant office, such vacancy shall be filled by appointment, by the County Board of the county in which such vacancy exists, until the next general, county or precinct election when a successor shall be elected for the unexpired term or a full term as the case may require."

Section 1 of Public Act 79-118 amends section 25-11 of "AN ACT concerning elections" [hereafter Election Code] (Ill. Rev. Stat. 1973, ch. 46, par. 25-11) so as to authorize the county central committee to fill vacancies in elective offices, i.e., county recorder of deeds, and authorizes the county board district central committee to fill vacancies in the office of county board member in those counties under township organization that have been divided into districts for the purpose of electing members to the county board. Previously, a vacancy in the office of county board member in township counties that have been divided into districts was filled pursuant to that portion of section 9 of "AN ACT relating to the composition and election of county boards in certain counties" (Ill. Rev. Stat. 1974 Supp., ch. 34, par.

Honorable David DeDoncker - 5.

839) which reads:

"If a vacancy occurs on the county board, the presiding officer of the county board, with the advice and consent of the county board, shall, within 60 days of the date the vacancy occurs, appoint some person, possessing the qualifications of a board member, to serve until the next election of county board members in the county at which time an election shall be held to fill the vacancy for the unexpired term."

This portion of section 9 has been eliminated by section 2 of Public Act 79-118.

Your letter states:

"On July 15, 1975, the County Board of Rock Island County, at its regular monthly meeting, filled two vacancies. One of the vacancies filled was that of the Office of Recorder of Deeds, the vacancy being occasioned by the death of the incumbent during the month of June, 1975. The County Board acted under the authority set forth in Chapter 46, Section 25-11, Illinois Revised Statutes. After the vote had been recorded and the appointee had been sworn by the County Clerk, it was discovered that on July 8, 1975, the Governor signed Senate Bill 463 into law.

* * *

The County Board also filled a vacancy on the County Board on July 15, 1975. The vacancy was occasioned by the fact that a board member resigned because he moved out of the board district. Rock Island County is a non-home rule county, under township organization. For purposes of electing a county board, the county is

Honorable David DeDoncker - 6.

divided into 29 county board districts. The county board acted pursuant to authority set forth in Chapter 34, Section 839, Illinois Revised Statutes.

* * *

After the votes to fill the county board vacancy had been recorded, the appointee was sworn by the County Clerk and proceeded to participate in board deliberations and voted whenever his name was announced on a roll call."

Your first question concerns the effective date of Public Act 79-118. You point out that Senate Bill 463 passed both houses of the General Assembly on June 27, 1975, and contained an effective date clause, which reads: "This amendatory Act takes effect upon its becoming a law". It would appear that the effective date is July 8, 1975, the date the Governor approved the bill. You ask whether your conclusion is correct. In my opinion the effective date is, as you state, July 8, 1975.

The effective date of Senate Bill 463 is governed by section 10 of article IV of the Illinois Constitution of 1970 and by section 1(b) of "AN ACT in relation to the effective date of laws". (Ill. Rev. Stat. 1973, ch. 131, par. 21(b).) Section 10 of article IV of the Illinois Constitution provides in pertinent part:

Honorable David DeDoncker - 7.

"The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1 * * *."

Pursuant to section 10, the General Assembly adopted "AN ACT in relation to the effective date of laws". (Ill. Rev. Stat. 1973, ch. 131, par. 21.) Section 1(b) of that Act provides in pertinent part:

"(b) A bill passed prior to July 1 of a calendar year that does provide for an effective date in the terms of the bill shall become effective on that date if that date is the same as or subsequent to the date the bill becomes a law; * * *"

Since section 9(a) of article IV of the Illinois Constitution of 1970 provides that a bill shall become law when the Governor approves it, Senate Bill 463 became law when the Governor signed it on July 8, 1975, and pursuant to section 10 of the bill, that was the effective date.

Your second question is whether vacancies in the offices of recorder of deeds and county board member occurring prior to the effective date of Public Act 79-118 but not filled until after that date are to be filled under the old law as it

Honorable David DeDoncker - 8.

stood at the time the vacancies occurred or under the new law in effect when the vacancy is filled. It is my opinion that the new law for filling vacancies must be used in the filling of all vacancies which are filled after the effective date of the new law.

Sections 1 and 2 of Public Act 79-118 amend existing legislation. These amendments become part of the original legislation as if incorporated therein at the time of its adoption, as to all matters occurring after the effective date of the amendments. The Supreme Court held in People v. Boykin, 298 Ill. 11, 20:

"An amendment of a statute by a subsequent act operates precisely as if the subject matter of the amendment had been incorporated in the prior act at the time of its adoption, so far as regards any action had after the amendment is made, for it must be remembered that an amendment becomes a part of the original act, whether it be a change of a word, figure, line or entire section or a recasting of the whole language." (emphasis added.)

Recent cases are to the same effect and hold that as to matters thereafter occurring such an amendment is effective as if it were part of the original act. (Bell v. School District No. 84, 407 Ill. 406; Secce v. Chicago Transit

Honorable David DeDoncker - 9.

Authority, 2 Ill. App. 2d 239.) Since the filling of the vacancies occurred after the effective date of the new law, the new law controls the filling of the vacancies.

Confusion as to the authority of the county central committee to fill a vacancy in the office of county recorder of deeds and the county board district committee to fill a vacancy in the office of county board member, when said vacancies occurred prior to July 8, 1975, may be caused by the words "when a vacancy occurs" which appear throughout section 1 of Public Act 79-118. For example, the second paragraph of section 1 of Public Act 79-118, which pertains to the filling of vacancies in elective county offices, i.e., county recorder of deeds, reads in pertinent part as follows:

"When a vacancy occurs in any county which is not a home rule unit in any elective county or precinct office at any time before the expiration of the term of such vacant office, such vacancy shall be filled within 60 days by appointment of the county central committee of the political party of which the incumbent was a candidate at the time of his election. * * *" (emphasis added.)

In attempting to discern whether the General Assembly intended the phrase "when a vacancy occurs" as a restriction on

Honorable David DeDoncker - 10.

the power of the county central committee or county board district committee to fill a vacancy occurring prior to July 8, the phrase obviously is ambiguous. In light of this ambiguity, it is logical to search for clarification by discerning the object and purpose of Public Act 79-118 and by construing the phrase "when a vacancy occurs" in a manner consistent with the legislative object and purpose of Public Act 79-118. The Illinois Supreme Court has noted the importance of ascertaining the object and purpose of legislation as an aid in construing statutory language so as to give effect to the intent of the legislature. In People ex rel. Cason v. Ring, 41 Ill. 2d 305, at 310, the court states:

"The primary purpose of statutory construction is ascertainment of the legislative purpose and intent. To that end, consideration of the history and course of the legislation is always proper. (People v. Boreman, 401 Ill. 566, 571; Scotfield v. Board of Education, 411 Ill. 11, 16.) Also apropos is consideration of the occasion and necessity for the law, the previous condition of the law on the subject, and the defects, if any, in the former law which were intended to be remedied. (Livingston v. Meyers, 6 Ill. 2d 325, 332; Anderson v. City of Park Ridge, 396 Ill. 235.) Furthermore, 'It is a universally adopted rule of statutory construction that the intention of

Honorable David DeDoncker - 11.

the legislature is to be gathered not only from the language used but also from the reasons for the enactment and the purposes to be thereby attained.' (Italics supplied.) In re Estate of Curtis, 28 Ill. 2d 172, 179; Mid-South Chemical Corp. v. Carpentier, 14 Ill. 2d 514, 517; People ex rel. Roan v. Wilson, 405 Ill. 122, 127."

It is obvious that the object and purpose of Public Act 79-118 was to divest the county board of the power to fill vacancies in elective county offices and invest the county central committee and county board district committee with the power to fill such vacancies. As such, it is logical to construe the phrase "when a vacancy occurs" as encompassing vacancies occurring prior to July 8 as well as vacancies occurring on or after July 8.

Your letter is therefore correct in assuming that, if Public Act 79-118 was effective on July 8, 1975, and if it governs the filling of any vacancy regardless of when the vacancy occurred, the county board had no authority on July 15, 1975, to appoint anyone to fill the vacancy in the office of county recorder of deeds nor did the presiding officer, with the advice and consent of the county board, have the power to fill a vacancy in the office of county board member.

Honorable David DeDoncker - 12.

In your third question you ask, assuming that the county central committee must fill the vacancy in the recorder's office, what is the voting strength of each member of the county central committee. You refer to the provisions of Illinois Revised Statutes, 1973, chapter 46, paragraph 7-8(c), specifying the voting strength of the various levels of committeemen. Section 1 of Public Act 79-118 expressly designates the county central committee of the appropriate political party as the appointing authority.

Article 7 of the Election Code governs the making of nominations by political parties. Section 7-7 thereof authorizes and constitutes specified central or managing committees for each political party including a county central committee and a county board district committee and provides for ward, township, and precinct committeeman. (Ill. Rev. Stat. 1973, ch. 46, par. 7-7.) Section 7-8(b) of the Code provides for the election of ward, township, and precinct committeemen; section 7-8(c) prescribes the membership of the county central committee and the voting strength of each of the three levels of members; and section 7-8(h) describes the powers of the several committees

Honorable David DeDoncker - 13.

including the county central committee. Ill. Rev. Stat. 1973, ch. 46, pars. 7-8(b), (c) and (h).

Clearly, then, section 1 of Public Act 79-118 in referring to the county central committee of the political party of which the incumbent was a candidate refers to the county central committee established under Article 7 of the Election Code. Sections 7-8(c) and (h) of that Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-8(c) and (h)) provide in pertinent part:

"(c) * * * In the organization and proceedings of the county central committee, each precinct committeeman shall have one vote for each ballot voted in his precinct by the primary electors of his party at the primary at which he was elected; each township committeeman shall have one vote for each ballot voted in his township or part of a township as the case may be by the primary electors of his party at the primary election immediately preceding the meeting of the county central committee; and in the organization and proceedings of the county central committee, each ward committeeman shall have one vote for each ballot voted in his ward by the primary electors of his party at the primary election immediately preceding the meeting of the county central committee."

"(h) Each committee and its officers shall have

Honorable David DeDoncker - 14.

the powers usually exercised by such committees and the officers thereof, not inconsistent with the provisions of this Article. * * *

Accordingly, it is my opinion in answer to your third question that the voting strength of each member of your county central committee is as prescribed in section 7-8(c) above set forth.

Your fourth question is what is the voting strength of the county board district committee in filling a vacancy in a seat on a county board which has been divided into districts. Although section 1 of Public Act 79-118 refers to the county board district central committee, I am of the opinion that the legislature was referring to the county board district committee described in section 7-8.01 of the Election Code. (Ill. Rev. Stat. 1973, ch. 46, par. 7-8.01.) That section provides:

"§ 7-8.01. The county board district committee of each political party in each county board district created pursuant to 'An Act relating to the composition and election of county boards in certain counties', enacted by the 76th General Assembly, shall consist of the precinct committeemen of the precincts included in the county board district."

Honorable David DeDoncker - 15.

Political parties and their committees are voluntary associations. (People ex rel. Kell v. Kramer, 328 Ill. 512.) The Supreme Court stated in the Kell case at page 519 that the right of political parties to make nominations is, in the absence of regulation by the legislature, "exercised in accordance with the will of the political party concerned, as that will is expressed through the rules, customs, conventions, or caucuses of such political organization". (See, also, People v. Republican General Committee, 63 App. Div. 438, 441, (N.Y. 1901).) This statement is equally applicable to the filling of a vacancy by the county board district committee. Since section 7-8.01 does not prescribe the voting strength of members of the county board district committee, that committee is free to choose its own voting system as it may deem appropriate in filling the office of county board member.

Because a weighted system of voting may not be used by the county board district committee, it is not necessary to answer your question concerning an adjustment for "split"

Honorable David DeDoncker - 16.

precincts. If the county board district committee chooses to use a weighted system of voting, it will have the power to decide whether any adjustment should be made for "split" precincts.

Your fifth question concerns the status and voting power of a county board member who was appointed by the county board after the effective date of Public Act 79-118. You are correct in your conclusion that, if an individual is elected or appointed to office and if the election or appointment is void because of a want of power in the electing or appointing body, the person so elected or appointed is a de facto officer. (Harvey v. Sullivan, 406 Ill. 472; People v. Brautigan, 310 Ill. 472; Daugherty v. Fippinger, 177 Ill. App. 522.) Since the county recorder of deeds and county board member were appointed, and the appointment was void because of a want of power in the appointing body, they would apparently be de facto officers. A person cannot be a de facto officer, however, where a de jure officer is exercising the functions of the office. (Harvey v.

Honorable David DeDoncker - 17.

Sullivan, 406 Ill. 472; People v. Brautigan, 310 Ill. 472.)

A de jure officer is "one who is in all respects legally appointed and qualified to exercise the office". Harvey v. Sullivan, 406 Ill. 472, 479; People v. Brautigan, 310 Ill. 472, 479.

Hence, if a de jure officer has been appointed under the new procedure and is exercising the functions of the office, there can be no de facto officer. Assuming, however, that no de jure officers were exercising the functions of the offices, the appointees under the old procedure were de facto officers. The acts of the de facto officers, as you also concluded, are valid and effectual when they concern the public or third persons. (People ex rel. Chillicothe Township v. Board of Review of Peoria County, 19 Ill. 2d 424; People v. Woodruff, 9 Ill. 2d 429; Mank v. Board of Fire and Police Commissioners, 7 Ill. App. 3d 478.) Therefore, the actions taken by the persons who were appointed by the county board are valid.

You have specifically asked whether actions of the county board participated in by a board member who may not

Honorable David DeDoncker - 18.

have been properly appointed, are valid. Under the authorities cited above, the board member is a de facto officer whose acts concerning the public or third persons are valid and effectual. Your conclusion that the acts of the county board, taken on July 15, 1975, were not invalid solely because of the participation of a board member not validly appointed, was correct. In a similar case the Illinois Supreme Court upheld as valid the acts of a board of review upon which de facto officers were sitting. (People ex rel. Chillicothe Township v. Board of Review of Peoria County, 19 Ill. 2d 424.) Based on this authority, the acts of the county board upon which a de facto officer was sitting, would not be invalid for that reason alone.

In summary, the answers to your questions are as follows:

- (1) Public Act 79-118 became effective on July 8, 1975.
- (2) Its provisions govern the filling of all vacancies occurring or in existence on or after the effective date of Public Act 79-118.

Let me take this opportunity to state that allowing the county central committee and county board district

Honorable David DeDoncker - 19.

committee to fill these vacancies, even though they occurred prior to July 8, will not conflict with section 4 of "AN ACT to revise the law in relation to the construction of the statutes". Ill. Rev. Stat. 1973, ch. 131, par. 4.

"§ 4. No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act." (emphasis added.)

When the vacancies occurred, no "right accrued" or "claim arose".

The County Board of Rock Island County or the presiding officer of the County Board of Rock Island County, with the advice and

Honorable David DeDoncker - 20.

consent of the County Board of Rock Island County, have no vested right to fill the particular vacancies. The method of filling vacancies in the office of county recorder of deeds and county board member is purely statutory and the General Assembly may change the method at any time. See, Board of Education v. Nickell, 410 Ill. 98, 103; see, also, 1967 Ill. Att'y. Gen. Op. 135.

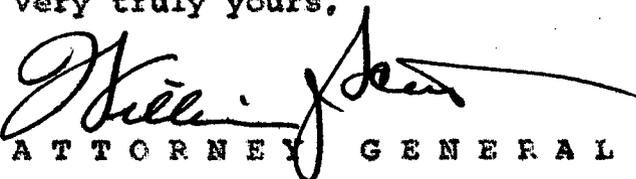
(3) The county central committee uses the method of weighted voting provided by statute in filling vacancies.

(4) The county board district committee in filling vacancies uses whatever system of voting its by-laws, constitution or rules of order may provide.

(5) The acts of the county board upon which an invalidly appointed officer was sitting would not be invalid for that reason alone.

This opinion is not to be construed as a comment upon the constitutionality or unconstitutionality of Public Act 79-118 or any portion thereof.

Very truly yours,


ATTORNEY GENERAL