



December 15, 2014

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## STATEMENT FROM ATTORNEY GENERAL MADIGAN ON ILLINOIS COMPTROLLER VACANCY

**Chicago** — Attorney General Lisa Madigan today provided the following statement on the impact of the unfortunate passing of Judy Baar Topinka, Illinois Comptroller and Comptroller-elect:

The State now faces two issues relating to the Office of the Comptroller. First, the Office of the Comptroller is vacant due to the passing of the sitting officeholder. Second, because Comptroller Topinka was also the Comptroller-elect, her passing leaves the State without a Comptroller-elect who can begin serving as Comptroller when the new term begins January 12, 2015.

The legal analysis of these issues is based on a review of the Illinois Constitution and statutes, as well as the official documents related to the adoption of the Constitution. These documents include the official information distributed to the voters, the explanation provided by the committees that drafted the provisions, and the comments of the Constitutional Convention's delegates.

The language of the Constitution and the official documents related to its adoption address both of the issues.

Article V, section 7 states:

**If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment.** The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor.

As this language makes clear, the Constitution details two distinct scenarios in which the Governor is authorized to fill the Office of Comptroller with an appointee – when the Comptroller-elect “fails to qualify” and when the Comptroller’s “office becomes vacant.” An officer-elect, such as the Comptroller-elect, “fails to qualify” to begin serving in office when, for example, he or she is unable to take the oath of office.

In addition to the language of section 7 of the Constitution, it is clear from the report of the committee drafting this section and the debates of the delegates that they considered a failure to qualify for an office to be separate and apart from a vacancy in office. The committee report and debates establish that the drafters specifically anticipated and directly addressed the unfortunate situation the state faces with the passing of the incumbent Comptroller who is also the Comptroller-elect by adding the phrase “fails to qualify” to section 7 and, as a result, authorizing the Governor to make an appointment.

Based on the language in the Constitution and the discussion during the drafting, it is my conclusion that a vacancy takes place when an officer is serving in the office and can no longer continue to do so, such as here, where the Comptroller has passed away while in office. A failure to qualify, on the other hand, will not occur until an officer-elect cannot be sworn in and thus qualify to begin serving.

Thus, the death of Comptroller Topinka creates a vacancy that the Constitution authorizes Governor Quinn to fill.

Because Judy Baar Topinka was also the Comptroller-elect, she will not be able to take the oath of office on January 12, 2015. As a result, on that date she will fail to qualify to serve as Comptroller. At that time, the sitting Governor – current Governor-elect Rauner – will be authorized by the Constitution to appoint a successor to hold the office.

Although the current vacancy in the Comptroller's office and the anticipated failure of the Comptroller-elect to qualify to begin serving in office on January 12, 2015, are both the result of the passing of Judy Baar Topinka, the Constitution treats them as separate events – one occurring immediately in the passing of the current Comptroller and the other occurring when the Comptroller-elect will be unable to be sworn into office and qualify to begin serving the term that starts on January 12, 2015. In each case, the sitting Governor has the authority to make an appointment to fill the Office of Comptroller. In this situation, Governor Quinn has the authority to fill the current vacancy and Governor-elect Rauner, once he is sworn into office, will have the authority to make an appointment to fill the Comptroller's office due to the failure of the Comptroller-elect to qualify.

Further, while the current law allows an unelected Comptroller to serve in office for four years without the approval of Illinois voters, it is a fundamental principle in a democracy that the people should elect the officers who represent them. Although the drafters of the 1970 Constitution provided that the Governor should fill the office of Comptroller with an appointee in certain circumstances, they also recognized and ensured that the General Assembly could choose to provide by law for a special election when an appreciable time remains in an uncompleted term.

The State is now facing the undemocratic circumstance in which an appointee could serve the Comptroller's full four-year term, notwithstanding that there is a statewide election in 2016 that could provide the voters with the opportunity to elect a successor to serve half of the term.

I urge Governor Quinn, Governor-Elect Rauner, the legislative leaders and the members of the General Assembly to support and move forward with a new law allowing the people of Illinois to vote, at the next regularly scheduled statewide election in 2016, to determine who will serve as Comptroller until the 2018 election.

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