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MUNICIPALITIES:  
Limitations on Mayor's  
Temporary Appointment Power

Honorable Clem Balanoff  
Chairman  
House Committee on Cities and Villages  
2073-L Stratton Building  
Springfield, Illinois 62706

Dear Representative Balanoff:

I have your letter wherein you inquire regarding the authority of a city council to place limitations upon the mayor's power to make temporary appointments to city offices. Specifically, your question has been prompted by contention over the validity of a proposed ordinance of the city of Oak Forest which would limit the term of temporary appointments to 30 days, and which would prohibit the mayor from making a temporary appointment of one person to the same office more than twice in one fiscal year. For the reasons hereinafter stated, it is my opinion that a city council has the authority to impose reasonable term limitations of the sort contemplated by the proposed ordinance upon temporary appointees.

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Section 3.1-30-5 of the Municipal Code (65 ILCS 5/3.1-30-5 (West 1992 Supp., as amended by Public Act 88-537, effective March 14, 1994)) provides:

"(a) The mayor or president, as the case may be, by and with the advice and consent of the city council or the board of trustees, may appoint (1) a treasurer (if the treasurer is not an elected position in the municipality), (2) a collector, (3) a comptroller, (4) a marshal, (5) an attorney or a corporation counsel, (6) one or more purchasing agents and deputies, (7) the number of auxiliary policemen determined necessary by the corporate authorities, (8) police matrons, (9) a commissioner of public works, (10) a budget director or a budget officer, and (11) other officers necessary to carry into effect the powers conferred upon municipalities.

\* \* \*

(c) Vacancies in all appointed municipal offices may be filled in the same manner as appointments are made under subsection (a). The city council or board of trustees of a municipality, by ordinance not inconsistent with this Code, may prescribe the duties, define the powers, and fix the term of office of all appointed officers of the municipality; but the term of office, except as otherwise expressly provided in this Code, shall not exceed that of the mayor or president of the municipality.

(d) An appointed officer of a municipality may resign from his or her office. If an appointed officer resigns, he or she shall continue in office until a successor has been chosen and has qualified. If there is a failure to appoint a municipal officer, or the person appointed fails to qualify, the person filling the office shall continue in office until a successor has been chosen and

has qualified. If an appointed municipal officer ceases to perform the duties of or to hold the office by reason of death, permanent physical or mental disability, conviction of a disqualifying crime, or dismissal from or abandonment of office, the mayor or president of the municipality may appoint a temporary successor to the officer." (Emphasis added.)

Nothing in section 3.1-30-5 of the Municipal Code either expressly provides a term of office for temporary appointees, or provides that the city council may not impose reasonable term limitations upon temporary appointees. Indeed, the plain language of subsection 3.1-30-5(c) of the Municipal Code vests in the city council the power to fix the term of office of all appointed offices. Temporary appointments to vacant offices are not excepted from this authority.

Moreover, pursuant to section 3.1-30-5, permanent appointments of officers are to be made by the mayor "with the advice and consent" of the city council. The power to approve implies the authority to exercise discretion and to withhold consent, as well. (Gustafson v. Wethersfield Township High School (1943), 319 Ill. App. 255, 259-60.) If the mayor were permitted to make "temporary" appointments with open-ended terms, or to make unlimited successive "temporary" appointments of the same person to a position, the authority of the council to approve or disapprove an appointment could be effectively circumvented. There is no statutory or constitutional provision which

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grants such power to the mayor. An ordinance provision which essentially prohibits the mayor from circumventing the power of the council to approve or disapprove mayoral nominees would be entirely consistent with the statutes governing appointments.

It is also necessary, however, to determine whether the proposed ordinance would impermissibly shift the balance of power between the council and the mayor. The city of Oak Forest is a home rule municipality, with respect to which article VII, section 6, of the Illinois Constitution of 1970 provides, in pertinent part:

"\* \* \* Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

\* \* \*

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. \* \* \*

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Thus, a home rule municipality may alter its form of government or provide for the selection of its officers in a manner other than that provided by law, but only with referendum approval. The ordinance in question does not provide for a referendum. Therefore, if the proposed imposition of limitations upon the authority of the mayor to make temporary appointments "alters" the form of government of the city of Oak Forest, it would be invalid unless approved by referendum.

There are several reported cases which are helpful in interpreting article VII, section 6(f) of the Constitution, as it may be applied to the Oak Forest ordinance. In Allen v. County of Cook (1976), 65 Ill. 2d 268, an ordinance reducing the number of votes needed by the county board to appropriate sums over \$5000 was held to be valid. In Pechous v. Slawko (1976), 64 Ill. 2d 576, attempts by a village board to provide for the appointment of certain officers by the board, rather than the mayor, were held to be invalid. In Dunne v. County of Cook (1985), 108 Ill. 2d 161 (Dunne I), an attempt by the county board to reduce the majority necessary to override a veto from four-fifths to three-fifths was held to be invalid. Lastly, in Dunne v. County of Cook (1987), 164 Ill. App. 3d 929 (Dunne II), an attempt by the county commissioners to empower themselves to hire and fire their own personal staff, contrary to a statute placing such

power in the county board president, was also held to be unconstitutional.

The analysis in each of the cited cases is similar. In the context of the constitutional provision, an ordinance which changes the fundamental relationship, or the balance of power, between the executive officer and the legislative body is one which alters the form of government of the political subdivision. Thus, in Pechous v. Slawko and Dunne II, the legislative body attempted to claim for itself an appointment authority which was vested in the executive, while in Dunne I the legislative body sought to control the executive veto authority. All three attempts were held to be unconstitutional. In Allen v. County of Cook, by way of contrast, the appropriation power was held to be generally legislative, so that an ordinance changing the majority by which the legislative body might act on a legislative matter did not alter its relationship with the executive.

Applying these principles to the proposed Oak Forest ordinance, it is clear that the city council is not attempting to exercise the mayor's power to make temporary appointments, but is merely imposing terms and conditions on such appointments to preserve the approval function which is reserved to it by statute. Such an ordinance would not alter the balance of power between the mayor and the council, but would only effectuate the procedure by which the council's expressly granted powers are to

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be exercised. It is the exclusive prerogative of the council to approve or disapprove mayoral appointments. Indeed, to conclude that a mayor may make indefinite temporary appointments, thereby avoiding the power of the council to approve appointments, could result in a prohibited shift in the balance of power as contemplated by the Constitution. Therefore, I perceive of no constitutional impediment to the council providing, by ordinance, for a temporary appointee to serve for only 30 or 60 days during which time the mayor may appoint a permanent successor who is subject to council approval.

In summary, it is my opinion that the city council of a home rule municipality may place reasonable term limitations upon temporary appointments by the mayor, and that the proposed Oak Forest ordinance is not facially invalid.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL