



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

February 4, 1975

FILE NO. S-864

COUNTIES:

**Fees and Salaries of
Circuit Court Clerk**

Honorable Dale A. Allison, Jr.
State's Attorney, Wabash County
One Twenty East Fourth Street
Mt. Carmel, Illinois 62863

Dear Mr. Allison:

I have received your letter wherein you state in part:

"The County Board of Wabash County has requested that I seek your opinion concerning the effect of Senate Bill 1240 on the salary of the Circuit Clerk of Wabash County.

On November 27, 1974, the Governor signed the Senate Bill 1240 which was to take effect immediately which changed the minimum salary for Wabash County public officials from \$8500 to \$12000. At the present time the salary of the Circuit Clerk of Wabash County is \$11000. * * *

Here in Wabash County we had a special election because of the death of our Circuit Clerk which

Honorable Dale A. Allison, Jr. - 2.

resulted in a new Circuit Clerk taking office December 2, 1974. Because of the enactment of Senate Bill 1240 she requested that her salary be adjusted to at least reflect the minimum allowed for a Circuit Clerk in a county of our size being \$12000. Since the county Board had not increased the salary of the Circuit Clerk the questions from the county Board are two. One, does the enactment of Senate Bill 1240 and its signing into law make mandatory on Wabash County the adjustment of the salary of the Circuit Clerk to reflect at least the minimum salary allowed for a county the size of Wabash County? Two, if that be the case would that adjustment in salary begin on December 2, 1974, the date of the taking of office of the new Circuit Clerk of Wabash County?"

Section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court, Recorders and Auditors with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than 1,000,000 inhabitants" (Ill. Rev. Stat. 1973, ch. 53, par. 37a.), grants the Wabash County Board the statutory power to set the salary of the clerk of the circuit court. Prior to November 27, 1974, section 1 read in part as follows:

"The County Board, in all counties of less than 1,000,000 inhabitants, shall fix the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Clerks of the Circuit Court,

Honorable Dale A. Allison, Jr. - 3.

Recorders and Auditors, * * * and such compensation * * * shall be fixed within the following limits:

To each such officer in counties containing less than 14,000 inhabitants, not less than \$8,500 per annum and not more than \$15,500 per annum.

* * * "

Section 1 was amended by Senate Bill 1240 (P.A. 78-1251).

This amendment raised the minimum salary payable to the clerk of the circuit court to \$12,000 per annum. Senate Bill 1240 was passed by the General Assembly on November 22, 1974 and signed by the Governor on November 27, 1974. The Bill was to take effect immediately.

The various counties of the State of Illinois have only the express powers granted to them by the Constitution or by law plus those powers which are necessarily implied to carry out such expressed powers. (Ill. Const., art. VII, sec. 7; Heidenreich v. Ronske, 26 Ill. 2d 360.) Therefore, the County Board of Wabash County may only set the salary of the circuit court clerk within the amounts contemplated by statute, that is, between \$12,000 per annum and \$15,500 per annum.

I have previously held that a circuit court clerk is not an officer of a unit of local government, but rather is a

Honorable Dale A. Allison, Jr. - 4.

non-judicial officer of the judicial branch of State government. (Op. Atty. Gen. S-658, October 26, 1973.) As a result, the provisions of section 9(b) of article VII of the Illinois Constitution which prohibit an increase or decrease in the salary of an elected officer of any unit of local government during the term for which that officer is elected is not applicable to the clerk of the circuit court.

Therefore, in answer to your first question I am of the opinion that the County Board of Wabash County must comply with the statutory directive of the legislature and provide for a salary of no less than \$12,000 per annum for the clerk of the circuit court. Since your clerk took office on December 2, 1974, after the raise in salary became effective, she is entitled to the increased salary as of that date.

Very truly yours,

A T T O R N E Y G E N E R A L