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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

September 28, 1983

FILE NO. 83-015

COMPENSATION:

Entitlement of the County
Clerk of Cook County to an
Annual Award under Public
Act 82-691

Michael J. Hamblet, Chairman
State Board of Elections
201 North Wells, Suite 500
Chicago, Illinois 60606

Dear Mr. Hamblet:

I have your letter wherein you inquire whether the county clerk of Cook County is entitled to receive an annual lump sum award of \$3,500, as provided in Public Act 82-691, effective July 1, 1983. For the reasons hereinafter stated, it is my opinion that the county clerk of Cook County is entitled to such an award.

Public Act 82-691 amended section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County

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Treasurers, County Clerks, Recorders and Auditors, with their necessary clerk hire, stationery, fuel and other expenses, in counties of less than [2,000,000] inhabitants" (Ill. Rev. Stat. 1982 Supp., ch. 53, par. 37a) by adding the following paragraph relating to the compensation of county clerks:

" * * *

In addition to but separate and apart from the compensation provided for above, the county clerk of each county that does not have a county board of election commissioners and the chief clerk of each county board of election commissioners shall receive an award of \$3,500 per annum for the additional duties required of such officer by the consolidation of elections law. The total amount required for such awards each year shall be appropriated by the General Assembly to the State Board of Elections which shall distribute the awards in annual lump sum payments to the several county clerks and chief election clerks.

* * *

"

The new paragraph clearly requires the State Board of Elections to make annual lump sum payments of \$3,500 to county clerks or chief clerks of county boards of election commissioners, as the case may be, in counties of less than 2,000,000. (See Ill. Att'y Gen. Op. No. 82-034, issued October 12, 1982, at 3.) This award is payment for the additional duties required of the clerks by the consolidation of elections law.

The compensation of certain officers of Cook County, including the county clerk, is fixed in section 31 of "AN ACT concerning fees and salaries, and to classify the several counties of this state with reference thereto" (Ill. Rev. Stat.

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1981, ch. 53, par. 49). Section 31 was not amended by Public Act 82-691. Further, according to the 1980 Federal census, the population of Cook County exceeds 5,000,000 inhabitants. Because section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, etc." does not apply expressly to counties in excess of 2,000,000 inhabitants, and because section 31 of "AN ACT concerning fees and salaries, etc." was not expressly amended by Public Act 82-691, it would appear under these provisions alone that the county clerk of Cook County would not be entitled to the annual award provided in Public Act 82-691. Reference to the transcript of debate concerning Senate Bill 556, subsequently enacted as Public Act 82-691, and to the provisions of Public Act 82-880, effective July 22, 1982, however, compels a different conclusion.

Throughout the debate on Senate Bill 556, the bill was treated as being applicable to all county clerks in the State. For example, Senator Schaffer, the sponsor of the bill, described its intent by stating:

" * * *

* * * This bill simply would add a * * *
thirty-five hundred dollar a year stipend to each
of the County Clerks in the State. * * *

* * *

(Emphasis added.) (Remarks of Senator Schaffer,
May 21, 1981, Senate Debate on Senate Bill No.
556, at 115.)

Similarly, in addressing the effects of the bill,
Representative McMaster, House sponsor of Senate Bill 556,

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stated that its expense to the State would be \$357,000 annually. (Remarks of Representative McMaster, June 18, 1981, House Debate on Senate Bill No. 556, at 26.) \$357,000, of course, is the amount necessary to provide an award of \$3,500 to the county clerk or chief clerk of the county board of election commissioners of each of the 102 counties in Illinois. At no point in the transcript of debate concerning Senate Bill 556 is there any indication that it was the intent of the General Assembly members to exclude the county clerk of Cook County from the annual award provision contained therein.

More important to the determination of the entitlement of the county clerk of Cook County to such an award, however, is Public Act 82-880, which appropriated certain funds to the State Board of Elections. Section 2 of Public Act 82-880 provides in part:

"The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Board of Elections for grants to local governments as follows:

* * *

For Payment of Lump Sum Awards to County Clerks and Chief Election Clerks as Compensation for Additional Duties Required of Such Officials by Consolidation of Elections Law, as provided in Public Act 82-691.	\$357,000
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* * *

Thus, the General Assembly, in accordance with its statements concerning the intent of Public Act 82-691, thereafter appro-

priated a sum sufficient to provide an annual award to each of the county clerks or chief clerks of county boards of election in the State. In my opinion, the appropriation of funds for awards to each of the county clerks in the State, without excepting the county clerk of Cook County, clearly showed that it was the intention of the General Assembly to include the Cook County clerk, and in effect amended by implication section 31 of "AN ACT concerning fees and salaries, etc.".

In People ex rel. Coons v. Howlett (1965), 33 Ill. 2d 304, the court held that an appropriation Act which increased legislative salaries amended by implication a statute which fixed salaries at a lower rate. The facts in that case were summarized by the court as follows:

"By an original mandamus proceeding in this court John E. Coons, a taxpayer, seeks to prevent the payment of a salary greater than \$6,000 per annum to members of the 74th General Assembly for the two-year period for which they were elected.

The governing statute in force in 1963 provided for compensation at that rate. (Ill. Rev. Stat. 1963, chap. 63, par. 14.) On June 26 of that year the General Assembly passed H.B. 1369 increasing the rate to \$7,500 per year, and on July 1 Senate Bill 1159 was approved by the Governor, making appropriations for salaries in the latter amount. On August 29 the Governor vetoed House Bill 1369. Petitioner Coons maintains that since the amending statute was vetoed the compensation remained by statutory authority at its pre-existing level of \$6,000 per year, even though an appropriation was passed and approved for a rate of \$7,500. He cites no authority for the proposition. The respondent State officers insist that the appropriation bill amended the statute by implication. This interpretation was adopted by the Attorney General of

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the State of Illinois in an opinion dated February 18, 1965, relying principally on People ex rel. Kaneland Community Unit School District v. Howlett, 30 Ill. 2d 128. [See 1965 Ill. Att'y Gen. Op. 49.]

* * *

"

(People ex rel. Coons v. Howlett (1965), 33 Ill. 2d 304, 305-06.)

The court held:

"

* * *

* * * The evident intent of the legislature was that members were to receive \$7,500 per year, and the expression of this intent in Senate Bill 1159 was approved by the Governor and became duly enacted into law. * * * The later law constitutes an amendment by implication and its provisions must prevail.

* * *

"

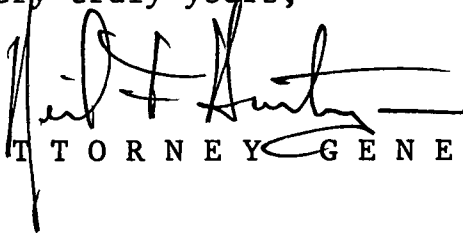
(People ex rel. Coons v. Howlett (1965), 33 Ill. 2d 304, 307-08.)

From the language of Public Act 82-691 and the statements made by the sponsors of the bill which became Public Act 82-691, it appears clear that it was the intent of the General Assembly to provide an annual award of \$3,500 to each of the county clerks or chief clerks of the State. That intention was made evident by the adoption of an appropriation bill providing \$3,500 for each of the 102 counties. Applying the rationale and the rule laid down in People ex rel. Coons v. Howlett, Public Act 82-880 must be construed as an amendment by implication of section 31 of "AN ACT concerning fees and salaries, and to classify the several counties of this state with reference thereto" (Ill. Rev. Stat. 1981, ch. 53, par. 49), which pro-

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vides for the compensation of the county clerk of Cook County. Therefore, it is my opinion that the county clerk of Cook County, together with the county clerks or chief clerks of county boards of election commissioners in those counties under 2,000,000 population, as the case may be, is entitled to an annual award of \$3,500.

Very truly yours,



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