



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**KWAME RAOUL**  
ATTORNEY GENERAL

October 17, 2023

FILE NO. 23-001

COUNTIES:

Authority of a Non-Home-Rule County  
to Secede from the State of Illinois

The Honorable Benjamin L. Goetten  
State's Attorney, Jersey County  
201 West Pearl Street  
Jerseyville, Illinois 62052

Dear Mr. Goetten:

I have your letter inquiring: (1) whether an Illinois county may secede from the State of Illinois and join another state; (2) if the answer to the first question is in the affirmative, what is the process for applying for or enabling the county to secede; and (3) if the answer to the first question is in the affirmative, whether there is a process for estimating the value of current State of Illinois assets such as parks, buildings, and highways found in the county. For the reasons stated below, it is my opinion that non-home-rule counties, such as Jersey County, do not have the authority to secede from the State of Illinois and join another state. Therefore, it is not necessary to address your remaining questions.

## BACKGROUND

According to the information you provided, a question arose at a Jersey County Board meeting concerning the propriety of submitting a referendum question asking whether the county should promote "moving [the] Illinois-Missouri border to make Jersey County, Illinois a county of Missouri[.]" Although the question was tabled by the Jersey County Board, the Board is nonetheless concerned that the issue will be raised again at some future date. Therefore, you inquire whether an Illinois county may secede from the State of Illinois and join another state.<sup>1</sup>

## ANALYSIS

It is well established that non-home-rule counties, such as Jersey County,<sup>2</sup> possess only those powers expressly granted to them by the constitution or by statute, together with those powers necessarily implied therefrom in order to effectuate the expressly granted powers. Ill. Const. 1970, art. VII, § 7; *Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981); *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 724 (2003); Ill. Att'y Gen. Op. No. 15-002, issued March 20, 2015, at 9. It is therefore necessary to review relevant provisions of the Illinois Constitution of 1970 and Illinois statutes to determine whether non-home-rule counties are authorized to secede from the State of Illinois and potentially affiliate with another state.

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<sup>1</sup>As noted in the information you provided, some areas in Illinois have raised the idea of forming new states or moving state boundaries. For example, in 2021, Representative Halbrogue introduced a resolution to urge Congress to "declare the 101 counties of outstate Illinois, along with outlying areas of Cook County wishing to be included, the 51st state of the United States of America and separate it from the rest of Illinois[.]" 102nd Ill. Gen. Assem., House Resolution 102, 2021 Sess. The resolution states that 22 Illinois counties passed advisory referenda in 2020 advocating to form a new state.

<sup>2</sup>Cook County is the only Illinois county currently authorized to exercise home rule powers. See Ill. Const. 1970, art. VII, § 6.

### The Illinois Constitution of 1970

The Illinois Constitution does not directly address the issue of county secession or outline procedures to alter the State border by other means. Notably, as discussed below, the local government article of the Illinois Constitution (Ill. Const. 1970, art. VII), which delineates the powers of non-home-rule counties and sets out the manner in which county boundaries may be changed, does not grant counties the authority to secede from the State of Illinois.

Article VII, section 7, of the Illinois Constitution sets out the powers of non-home-rule counties and provides, in pertinent part:

Counties \* \* \* which are not home rule units shall have only powers granted to them by law and the powers (1) to *make local improvements* by special assessment and to exercise this power jointly with other counties and municipalities \* \* \*; (2) *by referendum, to adopt, alter or repeal their forms of government provided by law*;<sup>[3]</sup> (3) \* \* \*;<sup>[4]</sup> (4) in the case of counties, to *provide for their officers, manner of selection and terms of office* as provided in Section 4 of this Article; (5) to *incur debt* except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to *levy or impose additional taxes* upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services. (Emphasis added.)

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<sup>3</sup>Section 7(2) of article VII was "designed to encourage increased flexibility in the structure and operation of units of local general government" (7 Record of Proceedings, Sixth Illinois Constitutional Convention 1665), subject to the requirement that the form of government be provided for in the Constitution or by statute. 1991 Ill. Att'y Gen. Op. 7, 8. The Report of the Committee on Local Government of the Constitutional Convention of 1970 explains that the provision "contemplates that the General Assembly will provide for various patterns of county administrative organization \* \* \* and that counties will be permitted to select among these plans by referendum." 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1667.

<sup>4</sup>The third enumerated power set out in article VII, section 7, pertains only to municipalities.

Section 7 of article VII thus limits the powers of non-home-rule counties to the five powers enumerated therein and any additional powers granted to them by statute. None of the enumerated powers in article VII, section 7, of the Constitution expressly or impliedly grant non-home-rule counties the power to secede from the State of Illinois.

Additionally, article VII, section 2, of the Illinois Constitution addresses the manner in which county boundaries may potentially be changed and provides, in pertinent part:

(a) The General Assembly shall provide by law for the *formation, consolidation, merger, division, and dissolution of counties*, and for the *transfer of territory between counties*.

(b) County boundaries shall not be changed unless approved by referendum in each county affected.<sup>[5]</sup> (Emphasis added.)

Article VII, section 2(a), directs the General Assembly to enact laws governing the process of creating new counties and merging, consolidating, dividing, dissolving, and transferring land between existing counties. Nothing in article VII, section 2(a), addresses the concept of county secession from the State or directs the General Assembly to provide a statutory procedure for the secession of counties from the State. Further, unlike other changes to the configuration of county boundaries contemplated by article VII, section 2(a), that occur wholly within the State's borders, secession would remove territory from the State's possession and control and affect the entire State's border. Although article VII, section 2(a), uses the general term "counties" rather

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<sup>5</sup>Other provisions in article VII of the Illinois Constitution provide additional instructions on how permitted boundary changes are to take place. See Ill. Const. 1970, art. VII, § 11 (addressing the initiation and submission of authorized boundary-change referenda, the threshold number of votes required to adopt a referendum, and when a referendum shall be held); Ill. Const. 1970, art. VII, § 12 (providing that the General Assembly shall provide by law for the transfer of assets, powers and functions, and payment of debt after an authorized boundary change).

than "*Illinois* counties," the provision must be interpreted as applying exclusively to counties *within* the State. To interpret section 2(a) as directing the General Assembly to enact laws governing the formation of counties in another state would be illogical and lead to absurd results. *People ex rel. Giannis v. Carpentier*, 30 Ill. 2d 24, 29 (1964) ("The constitution should whenever possible be construed to avoid \* \* \* irrational, absurd, or unjust consequences"); *Kaull v. Kaull*, 2014 IL App (2d) 130175, ¶ 54.

Additionally, article VII, section 2(b), elaborates that the voters of the county must approve any boundary changes authorized by the General Assembly under section 2(a) and affecting the county. Nothing in section 2(b) authorizes referenda approval for counties to secede from the State of Illinois. Accordingly, the Illinois Constitution of 1970 does not grant non-home-rule counties the power to secede from the State of Illinois.

A review of records from the 1970 Constitutional Convention supports this conclusion. First, in proposing to omit the boundaries article of the Illinois Constitution of 1870 (Ill. Const. 1870, art. I) (which purported to describe the State boundaries and jurisdiction) from inclusion in the new Constitution, the General Government Committee of the Sixth Constitutional Convention (the Committee) rejected a proposal that would have corrected the boundaries and added that "nothing in this Article shall be construed to prevent the formation of a new State or States by the junction of Illinois or any part thereof with any other State or States or parts thereof, in accordance with the provisions of Section 3 of Article IV of the Constitution of the United States." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 575. The Committee rejected this proposal because "the Committee [did] not want to raise *even the*

*slightest hint*" of the suggestion "that one portion of this State could break away from the rest to become another state." (Emphasis added.) 6 Record of Proceedings, Sixth Illinois Constitutional Convention 576; *see also* Remarks of Delegate Leahy, 2 Record of Proceedings, Sixth Illinois Constitutional Convention 1068 ("[I]f we knocked the boundaries [article] out, there was fear expressed by some delegates that somehow people would think that we had ceded sovereignty").

### **Illinois Statutory Provisions**

#### **Counties Code**

The Counties Code (55 ILCS 5/1-1001 *et seq.* (West 2022)) does not expressly grant non-home-rule counties the power to secede. As described above, article VII, section 2(a), of the Illinois Constitution instructs the General Assembly to "provide by law for the *formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.*" (Emphasis added.) The General Assembly has enacted a corresponding set of provisions within the Counties Code designed to fulfill this constitutional directive. For example, section 1-1002 of the Counties Code (55 ILCS 5/1-1002 (West 2022)) provides that "[t]he boundaries of the several counties of this State shall remain as now established until the same be changed according to law." Pursuant to these provisions, counties may modify their boundaries by transferring territory among themselves (55 ILCS 5/1-2001 through 1-2007 (West 2022)), by forming new counties out of existing ones (55 ILCS 5/1-3001 through 1-3011 (West 2022)), and by uniting with adjoining Illinois counties (55 ILCS 5/1-4001 through 1-4018 (West

2022)).<sup>6</sup> However, these provisions do not expand the options available under the Constitution to include county secession. Therefore, the Counties Code does not grant non-home-rule counties the power to secede from the State.

### Election Code

Similarly, nothing in the Election Code (10 ILCS 5/1-1 *et seq.* (West 2022)) empowers counties to secede from the State of Illinois via binding referenda. Although Illinois law enables counties to submit to voters "[q]uestion[s] of public policy" which pertain to any "subject matter other than the nomination or election of candidates" (10 ILCS 5/1-3(15) (West 2022); *see, e.g.*, 55 ILCS 5/5-1005.5 (West 2022)), the law differentiates between when a referendum on a question of public policy is legally binding or is merely advisory. Section 28-1 of the Election Code (10 ILCS 5/28-1 (West 2022)) provides that "[q]uestions of public policy which have *any legal effect* shall be submitted to referendum only as authorized by a statute *which so provides* or by the Constitution." (Emphasis added.) It follows that a referendum asking voters whether a non-home-rule county should secede from the State will have no legal effect unless either an Illinois statute or the Illinois Constitution specifically indicates that such a question is subject to a legally binding referendum. There is no Illinois law that provides for a legally binding referendum on the question of county secession. While county boards are

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<sup>6</sup>These statutory provisions also address the consequences following a boundary-change referendum, including how the affected counties should account for property, the responsibilities of the affected county officers, and the effects of boundary changes on legislative and judicial apportionment. These consequences clearly evince an intent that boundary changes under these statutes take place within the State borders. For example, the county unification statute provides that county officials, including county board members and State's Attorneys, are to serve out their terms alongside the officials from the adjoining county. 55 ILCS 5/1-4008 through 1-4013 (West 2022). Section 1-4016 of the Counties Code (55 ILCS 5/1-4016 (West 2022)) further stipulates that legislative and judicial apportionment will remain the same following a unification referendum.



authorized to submit for consideration an "advisory question of public policy[,]"<sup>7</sup> which might permit counties to ask constituents for their opinion on secession-related topics (55 ILCS 5/5-1005.5 (West 2022)), a vote on the subject would have no binding effect.<sup>8</sup> 1983 Ill. Att'y Gen. Op. 39, 39.

### **Federal Concerns**

I further note that even if Illinois law authorized a county to secede from the State of Illinois, proponents of county secession would face additional hurdles at the federal level. A state's sovereignty over its territory is fundamental to our federal system and is a principle found throughout the text of the United States Constitution.<sup>9</sup> State boundary changes are governed by

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<sup>7</sup>Similarly, county voters may petition to include on the ballot non-binding questions of public policy. 10 ILCS 5/28-6(a), (c) (West 2022).

<sup>8</sup>Additionally, there are no Illinois or federal cases addressing the issue of county secession. In the wake of the Civil War, however, the Supreme Court confirmed that the United States Constitution does not permit states to secede from the Union. See *White v. Hart*, 80 U.S. (13 Wall.) 646, 650-51 (1871) (comparing the attempted secession of southern states to a hypothetical situation where a county or other municipal subdivision of a state attempts an insurrection and explaining that a state has an inherent right to use "all the means necessary to put down the resistance to its authority, and restore peace, order, and obedience to law"); *Texas v. White*, 74 U.S. (7 Wall.) 700 (1868). While the circumstances of your inquiry differ, these decisions make clear that a county does not have the unilateral right to leave a state. These decisions also align with the long-held conclusion that municipal corporations and other political subdivisions are "convenient agencies" of the state. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907). These subdivisions are created by the legislature and derive all their power through it. *Harris Trust & Savings Bank v. Village of Barrington Hills*, 133 Ill. 2d 146, 153 (1989) ("It is universally recognized that municipal corporations are creatures of the State and that, absent constitutional restraints \* \* \*, they are subject to the will and discretion of the legislature"); see also *People v. Batterman*, 355 Ill. App. 3d 766, 769 (2005) (counties are "political subdivisions of States--counties \* \* \*--never were and never have been considered as sovereign entities but are considered subordinate governmental instrumentalities" (internal quotations omitted)), *appeal denied*, 215 Ill. 2d 600 (2005), citing *Waller v. Florida*, 397 U.S. 387, 392 (1970), quoting *Reynolds v. Sims*, 377 U.S. 533, 575 (1964).

<sup>9</sup>The tenth amendment of the United States Constitution defines the basic relationship between the federal government and the states. It embodies the principle that the federal government has only the powers enumerated in the Constitution, while the states possess all the powers the Constitution does not forbid. By contrast, the Constitution is silent on the powers of state political subdivisions such as counties.



the admissions clause (U.S. Const., art. IV, § 3, cl. 1) and the compact clause (U.S. Const., art. I, § 10, cl. 3). The admissions clause grants Congress the power to admit new states and prevents a subdivision of an existing state from breaking away without the state's consent:

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The issue of state consent was at the forefront of the debate over this clause. 2 Records of the Federal Convention of 1787, 455-56, 462-64 (Max Farrand ed., 1911). Some delegates objected to the state consent requirement because it would allow existing states to "keep the injured parts of the States in subjection[.]" Remarks of L. Martin, 2 Records of the Federal Convention of 1787, 463. However, the prevailing view was that a state cannot be dismembered without its consent. Remarks of Roger Sherman, 2 Records of the Federal Convention of 1787, 455.

Despite the debate over the consent requirement, of the 37 states admitted under this clause, only four states have been formed out of existing states.<sup>10</sup> Additionally, there are very few examples of established states exchanging counties or significant territory.<sup>11</sup> While it is unclear whether

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<sup>10</sup>Vermont was admitted to the Union (1 Stat. 191 (1791)) with New York's consent. See 3 Records of the Governor and Council of the State of Vermont 459-60 (E. P. Walton ed., 1875). Kentucky was admitted to the Union with Virginia's consent. 1 Stat. 189 (1791). Maine was admitted with Massachusetts's consent. 3 Stat. 544 (1820). West Virginia was admitted during the Civil War from Virginia's territory. 12 Stat. 633 (1862).

<sup>11</sup>For example, during West Virginia's admission process (see note 10), Virginia and West Virginia agreed that certain Virginia counties could elect to become part of West Virginia at some future date. *Virginia v. West Virginia*, 78 U.S. 39, 58-59 (1870). Congress consented to this compact when it passed West Virginia's enabling act, and Jefferson and Berkeley counties voted to join West Virginia in 1863. *Virginia*, 78 U.S. 39 at 58-61. Congress formally acknowledged the transfer in 1866. 14 Stat. 350 (1866).

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the transfer of a single county would form a "new State" under the meaning of the admissions clause, it is evident that the framers intended that states could not be divided without their consent.

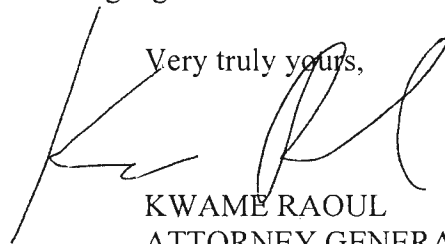
Additionally, the compact clause provides, in part, that "[n]o State shall, without the Consent of Congress \* \* \* enter into any Agreement or Compact with another State[.]"

While it is not necessary for Congress to assent to an agreement between states that merely defines a "true and ancient boundary" (*Virginia v. Tennessee*, 148 U.S. 503, 522 (1893)), any boundary adjustment that involves one state ceding territory to another would likely require congressional consent in addition to the consent of the affected states. *See New Jersey v. New York*, 523 U.S. 767, 811-12 (1998).

#### CONCLUSION

For the reasons stated above, it is my opinion that non-home-rule counties do not have the authority to secede from the State of Illinois. Accordingly, any referendum on the issue of county secession would have no binding legal effect.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kwame Raoul', is written over the typed name and title.

KWAME RAOUL  
ATTORNEY GENERAL