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SPRINGFIELD

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OFFICERS:

Chairman of State Board of
Elections -- Holding Over in
Office after Expiration of Term

John W. Countryman, Chairman
State Board of Elections
1020 South Spring
Springfield, Illinois 62784

Dear Mr. Countryman:

I have your letter wherein you inquire whether you may act as Chairman of the State Board of Elections, even though your term has expired, until such time as the Board obeys its statutorily mandated duty to elect a new Chairman with a political party affiliation different from your own. For the reasons hereinafter stated, it is my opinion that you may continue to act as Chairman of the Board until the Board elects your successor. By acting as Chairman of the Board, you are a de facto officer, and as such, your acts will be valid.

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Section 1A-6 of The Election Code (Ill. Rev. Stat. 1978 Supp., ch. 46, par. 1A-6) provides in pertinent part as follows:

"One member of the State Board of Elections shall be elected by the members of the Board to be chairman and shall serve as chairman of the Board for a term ending June 30, 1979. On July 1 of 1979 and on July 1 of each odd-numbered year thereafter, a chairman shall be elected by the members of the Board for a 2 year term ending June 30 of the next odd-numbered year. If July 1 of any odd-numbered year does not fall on a business day, said election shall be held on the first business day thereafter. The chairman elected for each 2 year term shall not be of the same political party affiliation as the prior chairman. * * *"

No specific provision is made in section 1A-6 for a holdover by the Chairman in the event the Board fails to elect his successor. It is well established, however, that, in the absence of express statutory authority to hold over until a successor is appointed and qualified, one who holds over after the expiration of his term of office is a de facto officer whose acts are binding and whose right to exercise the powers of the office can be questioned only in a quo warranto action. (People v. Woodruff (1956), 9 Ill. 2d 429, 438; People ex rel. Jones v. Beach (1875), 77 Ill. 52, 54; Andrulis v. First Nat'l Bank of Lake Forest (1972), 4 Ill. App. 3d 436, 439; 1906 Ill. Att'y Gen. Op. 312.) Acts of de facto officers are as valid and effectual where they concern

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the public or the rights of third parties as those of de jure officers. People v. Woodruff (1956), 9 Ill. 2d 429, 438; Mank v. Bd. of Fire and Police Commissioners (1972), 7 Ill. App. 3d 478, 483.

Statutes providing for holdovers in public office evince a public policy against hiatuses in public office. (People ex rel. McCarthy v. Barrett (1936), 365 Ill. 73, 83; 63 Am. Jur. 2d Public Officers and Employees § 160.) This same public policy has also been evinced in the reluctance of courts to invalidate acts of public officers who hold over without express authority. Particularly when dealing with a scheme such as that provided in article 1A of The Election Code (Ill. Rev. Stat. 1977, ch. 46, par. 1A-1 et seq.), a scheme into which political deadlock is built, the public policy against a hiatus should be strong.

Therefore, as of July 1, 1979, by acting as Chairman, you became and are de facto Chairman of the State Board of Elections until the Board members obey their statutory mandate to elect your successor. Your acts with respect to the public and the rights of third persons will be valid and you may exercise powers with regard to fiscal matters as though you were de jure Chairman of the Board.

Very truly yours,

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