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FILE NO. S-784

COUNTIES:

**Supervisor of Assessments -
Removal from Office**

**Honorable Homer J. Tice
State's Attorney
Menard County
Petersburg, Illinois 62675**

Dear Mr. Tice:

I have your letter wherein you state:

"I am writing to you requesting an opinion with respect to the following questions which pertain to the County government of Menard County, State of Illinois:

- 1. Can the Supervisor of Assessments of the County of Menard, who has been appointed by the County Board of the County pursuant to Section 484a of Chapter 120 of the Illinois Revised Statutes, be removed by the County Board prior to the termination of the term of office, which is 4 years?**
- 2. If the Supervisor of Assessments may be removed by the County Board prior to the termination of**

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his term of office as specified in the statute, what reasons would justify the removal of the Supervisor of Assessments by the County Board?

3. Should there be a removal of the Supervisor of Assessments prior to the termination of his term of office, what procedure should be utilized for removing such officer and is such officer entitled to a hearing before the County Board or any other body prior to such removal along with a specification of charges against him?

4. Should the Supervisor of Assessments be successfully removed by the County Board, may they appoint a person who is presently acting as Deputy Supervisor of Assessments but who does not meet the qualifications for Supervisor of Assessments as specified in Section 484a of Chapter 120 of the Illinois Revised Statutes to complete the term of the departed Supervisor of Assessments?

* * *

The statutory provision pursuant to which the Supervisor of Assessments of Menard County is appointed is section 3a of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 484a) which provides in part:

"§ 3a. In counties containing less than 1,000,000 inhabitants and not having an elected board of assessors, the office of supervisor of assessments or county assessor, shall be filled by appointment by the county board, as herein provided.

* * *

Neither said Act, nor any other Act, empowers a county board to remove a Supervisor of Assessments from office. Said Act

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does, however, vest the judiciary with such power by providing in sections 322, 323 and 324 thereof (Ill. Rev. Stat. 1973, ch. 120, par. 803, 804, 805) as follows:

"§ 322. Any assessor, or deputy assessor, county assessor, member of the board of appeals or member of the board of review, or other person whose duty it is to assess property for taxation or equalize any such assessment, who shall refuse or knowingly or willfully neglect any duty required of him by law, or who shall consent to or connive at any evasion of the provisions of this Act whereby any property required to be assessed shall be unlawfully exempted in whole or in part, or the valuation thereof be set down at more or less than is required by law, shall be guilty of a Class A misdemeanor. He shall also be liable upon his bond to the party injured for all damages sustained by such party as above provided, and shall also be removed from office by the judge of the court before whom he is tried and convicted."
(emphasis added)

"§ 323. Every county clerk, assessor, collector or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this Act, or who shall consent to or connive at any evasion of its provisions, whereby any proceeding required by this Act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the same be entered upon the tax list at less than its fair cash value, shall, for every such offense, neglect

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or refusal, be liable, on the complaint of any person, for double the amount of the loss or damage caused thereby, to be recovered in a civil action in the name of the People of the State of Illinois in any court having jurisdiction, and may be removed from his office at the discretion of the court." (emphasis added)

"§ 324. If any officer shall fail or neglect to perform any of the duties required of him by this Act, upon being required so to do by any person interested in the matter, and for the failure or neglect to perform such duty there is no other or specific penalty provided in this Act, he shall be liable to a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), to be recovered in a civil action in the circuit court of the proper county, and may be removed from office at the discretion of the court; and any officer who shall knowingly violate any of the provisions of this Act, for the violation of which there is no other specific penalty provided for herein, shall be liable to a fine not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00) to be recovered in a civil action in the name of the People of the State of Illinois, in any court having jurisdiction and may be removed from office at the discretion of the court, and said fines when recovered shall be paid into the county treasury." (emphasis added)

In response to your first question, therefore, based upon the information above and the decisions set forth below, I am of the opinion that the Menard County Board lacks authority to remove the Supervisor of Assessments.

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The case of People ex rel. Iddings v. Dreher, 302 Ill. 50, sets forth the basis for the above conclusion. The issue for determination in Dreher was whether or not the city council could remove the elected mayor from office for misconduct. The court, after examining several statutory provisions, stated at page 55-56:

"* * * Section 14 of article 2, pertaining to the powers and duties of mayor, provides the manner in which a mayor may be removed from office and the offenses that may be made the basis of such removal. That section is as follows: 'In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or misfeasance in the discharge of the duties of his office he shall be liable to indictment in any court of competent jurisdiction, and, on conviction, shall be fined in a sum not exceeding one thousand dollars; and the court in which such conviction shall be had shall enter an order removing such officer from office.'"

The court, at page 56, went on to note that:

"It is evident from these provisions of the act that the legislature has not conferred upon the city council authority to remove a mayor from office but has provided the means by which such removal may be secured. There is no prohibition or limitation in the constitution of this State on the power of the legislature to prescribe the means by which officers, other than judicial officers, below the grade of State officers may

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be removed from office. That power, therefore, rests entirely in the hands of the legislature. (Donahue v. County of Will, 100 Ill. 94.) The legislature has prescribed the means by which a mayor may be removed from office, and in so doing has given the city council no express powers concerning such motion. In view of the fact that such removal is provided for by statute it cannot be said that the power of removal is one necessarily incident to the express powers given the city council. We are of the opinion, therefore, that the city council is without authority to remove a mayor from office."

Since the Illinois Constitution of 1970 contains no prohibition or limitation on the power of the legislature to prescribe the means by which an officer, such as the Supervisor of Assessments may be removed, and since an office created by statute, such as that of Supervisor of Assessments, is wholly within the power of the legislature creating it (People ex rel. Hoyne v. McCormick, 261 Ill. 413), I am of the opinion that under the law laid down in Dreher the county board has no power to remove the Supervisor of Assessments for any reason.

While it is true that the Dreher case involved an elected officer, whereas the situation you present involves one appointed by the board which wishes to remove him, this distinction does not alter my opinion. In Hulman v. Old

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Reliable Savings and Loan Association, 115 Ill. App. 2d 313, the Commissioner of Savings and Loan Associations sought to remove a receiver whom he had appointed. The court at page 316-17 stated the Commissioner's contentions and its conclusions as follows:

"The Commissioner contends that the power to appoint carries with it the implied power to remove. He also argues that the recent case of *People ex rel. Knight v. O'Brien*, 40 Ill2d 354, 240 NE2d 686, has held that the supervising court is without authority to remove a receiver from office and that if we should now conclude that the Commissioner does not have such power of removal, a receiver could not be removed by anyone. That is not an uncommon situation in our body politic. Frequently a governor, mayor or board is given the power to appoint but not remove.

The statutory power to appoint does not, in the absence of an express provision, carry with it the power of removal. *Field v. The People*, 3 Ill 79; *People v. Ridgley*, 21 Ill 64; 9 CJS. Banks and Banking, § 496. * * * "

In response to your second and third questions, the grounds and procedure for removal of the Supervisor of Assessments are contained in sections 322, 323 and 324 of said Act, supra, set forth at the beginning of this opinion.

In your fourth question you inquire as to whether, in case the Supervisor of Assessments were to be removed,

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the county board could appoint the deputy supervisor of assessments to complete the term of the removed Supervisor of Assessments where said deputy does not meet the qualifications for Supervisor of Assessments set forth in section 3a of said Act, supra. Said section provides in part:

"* * * To be eligible for appointment a person must have had at least 2 years' experience in the field of real estate sales, assessments, finance or appraisals and must have passed an examination conducted by the Department to determine his competence to hold such office. The examination shall be conducted by the Department at some convenient location in the county. The Department shall certify to the county board a list of the persons who passed the examination indicating the grade scored by each such person. Appointment shall be made of one of the 3 persons attaining the highest grades in the examination. Notice of the time and place of the examination shall be given by publication, in a newspaper of general circulation in the county, at least one week prior to the examination. The term of office shall be 4 years from the date of appointment and until a successor is appointed and qualified. Vacancies shall be filled by the appointment for a full term. * * * "

It is a widely accepted principle of law that:

"When an office has been conferred upon one legally eligible, and has been accepted, no vacancy can be said to exist therein until the term of service and right to hold, as fixed by the law, expires, or until the death, resignation, or removal of the person elected or appointed. Johnston v. Wilson, 2 N. II.

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202, 9 Amer. Dec. 50. * * * (emphasis added)
State ex rel. Carson v. Harrison, 113 Ind. 434,
16 N.E. 384, 386.

If a Supervisor of Assessments were removed from office, there would, in my opinion, be a vacancy in said office. Since section 3a of said Act, supra, provides for a vacancy to be filled by appointment for a full term, I am of the opinion that the person so appointed must meet the eligibility requirements set forth in said section. Consequently, where the deputy supervisor of assessments does not meet said requirements, he may not be appointed to fill the vacancy.

Very truly yours.

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