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FILE NO. S-1237

COUNTIES:

Authority of Merit Commission
to Retain Private Counsel

Honorable Bruce W. Black
State's Attorney
Tazewell County
Pekin, Illinois 61554

Dear Mr. Black:

I have your letter wherein you ask the following questions:

1. May the Tazewell County Merit Commission retain private counsel to advise it regarding the submission of the standard pay plan or the revision of its rules, regulations or procedures?
2. Must the Tazewell County state's attorney advise the Merit Commission concerning a discharge proceeding in which he is the prosecuting attorney?

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I have previously advised that county officers may not retain private counsel unless there is specific enabling legislation. (1975 Ill. Att'y. Gen. Op. 12; No. NP-760, issued May 24, 1974; 1973 Ill. Att'y. Gen. Op. 18.) The county merit commission has no specific statutory authority to retain private counsel. Therefore, my answer to your first question is No.

In regard to your second question, in opinion No. S-328 (1971 Ill. Att'y. Gen. Op. 82) I advised that according to recognized merit principles of public employment, discharge proceedings against a deputy should be instituted by the sheriff of the county. Subparagraph (3) of section 5 of "AN ACT in regard to attorneys general and state's attorneys" requires the state's attorney to prosecute all proceedings brought by a county officer in his official capacity. Therefore, as state's attorney of Tazewell County, you have a duty to represent the sheriff in discharge proceedings before the merit commission if you determine that there is a cause for removal of a deputy. See, 1975 Ill. Att'y. Gen. Op. 330.

As an attorney you may not represent conflicting interests or undertake to perform inconsistent duties. Thus,

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The Tazewell County Merit Commission administers the deputy sheriff merit system in Tazewell County. The commission is responsible for promulgating rules, regulations, and procedures for the operation of the merit system. Ill. Rev. Stat. 1975, ch. 34, par. 859.1.

The state's attorney is the attorney and legal advisor for the county. Section 5 of "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1975, ch. 15, par. 5) provides in pertinent part as follows:

"§ 5. The duty of each State's attorney shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for this county, in which the people of the State or county may be concerned.

* * *

(3) To commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

(4) To defend all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county.

* * *

(7) To give his opinion, without fee or reward, to any county officer in his county, upon any question or law relating to any criminal or other matter, in which the people or the county may be concerned.

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you may not advise the merit commission concerning a discharge proceeding which you are prosecuting before the commission. In a case such as this, the merit commission could receive legal advise from a special state's attorney who would be appointed to advise the merit commission in a particular matter. However, I should point out that the appointment of a special state's attorney is in the discretion of the court. Hutchens v. Wade (1973), 13 Ill. App. 3d 787.

Very truly yours,

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