



NEIL F. HARTIGAN  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

November 25, 1985

FILE NO. 85-022

COUNTIES:  
Authority of County Board to  
Create a Central Services  
Department Without a County-  
Wide Referendum

Honorable Craig DeArmond  
State's Attorney, Vermilion County  
Court House  
7 North Vermilion Street  
Danville, Illinois 61832

Dear Mr. DeArmond:

I have your letter wherein you inquire whether a county board has the authority to create by resolution, without a county-wide referendum, a central services department, as hereinafter described, and to delegate to it the duties of budget preparation and county purchasing which heretofore have been the responsibility of the county auditor. Stated

Honorable Craig DeArmond - 2.

conversely, you inquire whether the creation of such a department may only be accomplished with the approval of the electorate through a county-wide referendum pursuant to section 4(c) of article VII of the Illinois Constitution.

You have advised that your question has been precipitated by the action of the Vermilion County Board, which recently adopted a resolution creating a County Board Central Services Department. Said resolution, a copy of which you have provided, establishes the chairmanship of the county board as a full-time position and delegates to the chairman supervisory functions of the County Board Central Services Department. As part of the Central Services Department, the position of personnel director was created. The functions of that position include, inter alia:

- 1) serving as equal employment officer;
- 2) carrying out the county's personnel policies and procedures;
- 3) maintaining the employment histories of county employees; and
- 4) assisting officeholders in the recruitment of employees.

The resolution also establishes the position of budget/purchasing director, whose functions are to coordinate the budgetary cycle of the county with the finance committee of the county board and the chairman of the county board and to serve as purchasing agent for purchases and services necessary for maintenance of county operations. The examples of work to be

Honorable Craig DeArmond - 3.

performed by the budget/purchasing director have been enumerated as follows:

1. Serves as secretary to the finance committee.
2. Conducts budget review and control with advice of status to finance committee and various departments.
3. Conducts budget preparation in cooperation with the finance committee.
4. Prepares revenue projections, budget reports, budget forms and established procedures.
5. Attends and maintains contact with Urban Counties Council, reporting on legislative programs affecting county finances.
6. Exercises ongoing budget analysis by tracking expenditures and reviewing requests for line item transfers.
7. Prepares final budget for adoption and public review.
8. Develops financial plans in which revenues and expenditures are projected against anticipated county growth.
9. Oversees purchasing functions.
10. Authorizes all purchase orders and coordinates with departments all purchasing policies.
11. Secures bids from accountants for annual audit at required times.
12. Coordinates with departments the preparation of bid specifications.
13. Performs other related duties as assigned or required.

It is well established that a county, acting through its county board (Ill. Rev. Stat. 1983, ch. 34, par. 302), can exercise only those powers conferred upon it by article VII of the Illinois Constitution, those powers expressly granted to it by the General Assembly, or those which arise by necessary implication therefrom. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Crumpler v. County of Logan (1967), 38 Ill. 2d 141,

Honorable Craig DeArmond - 4.

149.) Furthermore, the powers of a county board are not to be enlarged by liberally construing statutory grants but are to be strictly construed against the governmental entity. Lutheran Social Services of Illinois v. County of Henry (1984), 124 Ill. App. 3d 753, 754; Connelly v. County of Clark (1974), 16 Ill. App. 3d 947, 949.

Section 4(c) of article VII of the Illinois Constitution provides as follows:

" \* \* \*

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

\* \* \*

"

(Emphasis added.)

Section 4(c), which applies to both home rule and non-home-rule counties, permits counties to create offices by ordinance as long as the creation does not constitute a material alteration in the process of government established by the General

Honorable Craig DeArmond - 5.

Assembly. (See Chicago Bar Association v. County of Cook (1984), 102 Ill. 2d 438; Taylor v. County of St. Clair (1974), 57 Ill. 2d 367, 374; People ex rel. Hanrahan v. Beck (1973), 54 Ill. 2d 561, 565.) Furthermore, certain county offices, including the office of auditor, may not be eliminated, except by the General Assembly or by county-wide referendum. It should be noted that since Vermilion County is not a home rule unit, it has no power to change its form of government whatsoever, even with referendum approval. Such power is restricted to home rule units pursuant to section 6(f) of article VII of the Illinois Constitution. See Chicago Bar Association v. County of Cook (1984), 102 Ill. 2d 438; Pechous v. Slawko (1976), 64 Ill. 2d 576; Dunne v. County of Cook (1984), 123 Ill. App. 3d 468, affirmed No. 60178, slip op. (Ill. S. Ct. July 26, 1985).

In addition to the constitutional limitations on the powers of counties to alter or eliminate the duties of county offices, section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1983, ch. 34, par. 429.18) provides as follows:

"No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance.

\* \* \*

"

Honorable Craig DeArmond - 6.

It therefore becomes necessary to ascertain whether the action of the county board of Vermilion County created offices or positions by ordinance or resolution which materially change the process of government as established by the General Assembly and whether the county board has altered the duties, powers, and functions of a county officer which are specifically imposed by law.

Subject to restrictions imposed by law, the power to manage the county business and the county finances is generally vested in the county board. (See Ill. Rev. Stat. 1983, ch. 34, par. 403.) The specific powers and duties of the county board include the power to install an adequate system of accounts and financial records (Ill. Rev. Stat. 1983, ch. 34, par. 303), the duty to make an annual statement of receipts and expenditures and a detailed financial report (Ill. Rev. Stat. 1983, ch. 34, par. 432, 432 1/2), and the duty to adopt an annual budget (Ill. Rev. Stat. 1983, ch. 34, par. 2101). In section 1 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1983, ch. 34, par. 2101), the General Assembly expressly assigned the task of budget preparation to the county board or to some person or persons designated by the county board. Pursuant to section 25.03 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1983, ch. 34, par. 404), the county board also has the power:

Honorable Craig DeArmond - 7.

"To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county, to issue purchase orders and make payments thereon upon compliance with the terms of such purchase orders, and to establish procedures therefor."

Furthermore, under authority conferred upon it in section 25.02-2 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1983, ch. 34, par. 403-2), the county board has the power to employ such personnel as it deems necessary to carry out such powers and duties. Accordingly, it appears that the creation of a Central Services Department is not materially altering the process of government as established by the General Assembly. Based upon those powers granted the county board in section 4(c) of article VII of the Illinois Constitution and in "AN ACT to revise the law in relation to counties", it is my opinion that the county board of Vermilion County has the power to create by resolution or ordinance, without the approval of the electorate in a county-wide referendum, a central services department to assist it in performing its duties and implementing its powers, including the duty of budget preparation.

As indicated, the power of the county board to manage the county funds and the county business is not absolute and unlimited. Rather, such power is limited to that which is not otherwise specifically provided for by law and must be

Honorable Craig DeArmond - 8.

exercised in accordance with other statutory provisions. (Locke v. Davison (1884), 111 Ill. 19, 25; see also Ill. Att'y Gen. Op. No. 84-003, issued April 4, 1984.) For example, on the basis of those statutes which are commonly referred to as internal control statutes, Attorney General Scott advised that a county board could not require those officers granted power over the internal control of their offices to make purchases for their offices through a county purchasing department. (See 1978 Ill. Att'y Gen. Op. 53.) Additionally, in opinion No. NP-581, issued May 3, 1973, it was stated that a county board was prohibited from requiring certain county officers to make purchases for their respective offices through a system of competitive bidding. The duties specifically imposed by law upon the county auditor also constitute limitations upon the financial powers of the county board.

In section 1 of "AN ACT to create the office of county auditor in certain counties, to provide for the appointment of county auditors in counties of less than 75,000 inhabitants, and to define the duties thereof" (Ill. Rev. Stat. 1983, ch. 34, par. 1501), the General Assembly mandated that all counties containing less than 3,000,000 but more than 75,000 inhabitants by the last Federal census, of which Vermilion County is one, have a county auditor. Section 3 of the same Act (Ill. Rev. Stat. 1983, ch. 34, par. 1504) enumerates the duties of the county auditor and provides as follows:



"The duties of the county auditor shall be to:

(a) Audit all claims against the county of whatsoever character, and recommend to the county board the payment or rejection of all bills presented.

(b) Collect and preserve statistical information with respect to cost of maintenance of the various institutions of the counties to which this act applies, such as county farms, county jails, workhouses and court houses, or any other institution maintained at county expense.

(c) Approve all orders for supplies issued by the various county officers, before the orders are to be placed with the parties to whom the same are to be given.

(d) Keep a record of all contracts entered into by the county board and all authorized county officers, for or on behalf of the county.

(e) Report quarterly to the county board the entire financial operations of the county including all fees and emoluments due the county from the various county officers as earned, collected or received under performance to their duties, revenues estimated and received, expenditures estimated and received, obligations unpaid, the condition of all funds and appropriations and other pertinent information.

Whenever so directed by the county board, the county auditor shall, also:

(f) Be the general financial accountant of the county and keep its general accounts.

(g) Audit the receipts of the various county officers presented for deposit with the county treasurer.

(h) Devise and install a system of financial records in the offices and divisions of the county, suitable to the needs of the office

Honorable Craig DeArmond - 10.

and in accordance with the generally accepted principles of accounting for governmental bodies, which system shall be followed in such offices.

(i) Maintain a continuous internal audit of the transactions and financial records of the officers, agents or divisions of the county."  
(Emphasis added.)

In opinion No. S-563, issued March 28, 1973 (1973 Ill. Att'y Gen. Op. 14), Attorney General Scott advised that the duties imposed upon the county auditor by direction of the county board are not duties specifically imposed by law, and as such, the county board could alter, eliminate, or transfer such duties. It appears, therefore, that the county board could transfer from the county auditor to a position created by the county board those duties labelled (f) through (i) in section 3 above. On the other hand, those duties of the county auditor labelled (a) through (e) in section 3 are duties specifically imposed on the county auditor by law. Therefore, pursuant to section 25.34 of "AN ACT to revise the law in relation to counties", a county board cannot transfer such duties from the county auditor to another officer or employee or eliminate the office of county auditor without first obtaining the approval for such action from the electorate in a county-wide referendum. As you can see, budget preparation is not a duty specifically imposed by law upon the county auditor, while purchase order authorization and the making of recommendations

Honorable Craig DeArmond - 11.

regarding bills are duties specifically imposed by law upon the county auditor.

For the reasons hereinbefore stated, it is my opinion that the county board may create by resolution or ordinance a central services department to assist it in performing its duties and exercising its powers. The county board, however, may not, through a resolution creating a central services department, require those county officers with internal control of their respective offices to make purchases through a county purchasing department, nor may it impose a system of competitive bidding on such offices. Furthermore, it is my opinion that the county board may transfer from the county auditor the duty of budget preparation without a county-wide referendum, but the county board may not, without the approval of the electorate in a county-wide referendum, transfer the duty of authorizing the purchase of supplies for the county officers and the duty to recommend payment or rejection of bills from the county auditor to a position created by resolution of the county board since those duties have been specifically imposed by law upon the county auditor.

Very truly yours,

  
ATTORNEY GENERAL