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FILE NO. S-608

MUNICIPAL CORPORATIONS:
President of Forest
Preserve District

Honorable Jack Hoogasian
State's Attorney of Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"In addition to your opinion rendered April 21, 1972, your file no. NP-449, an examination of the second paragraph of Section 3A of Chapter 97 1/2, indicates that county board members serve as forest preserve commissioners where the boundaries of the district are coextensive with the boundaries of any county, as is Lake County, but the second paragraph is absolutely silent as to how, if at all, the president or chairman of the Forest Preserve is created.

Paragraph 1 of Section 3A states that the president of the Board of Commissioners is appointed by the County Board chairman, subject to approval by the County Board. The third paragraph, referring to counties in excess of one million, states that the chairman of the County Board shall perform the duties and functions of the president or chairman of the Forest Preserve.

Since Paragraph 2 of Section 3A is silent, does this mean that the County Board chairman of the County Board of Commissioners automatically becomes the chairman or president of the Forest Preserve when the forest preserve boundaries are coextensive with the boundaries of the County, as in Lake County, Illinois. Please advise."

It would unduly prolong this opinion to quote section 3a of "An Act to provide for the creation and management of Forest Preserve Districts." (Ill. Rev. Stat. 1971, ch. 57 1/2, par. 3a.) The provisions of paragraph 1 of section 3a do not apply to your county since it is my understanding that the boundaries of the forest preserve district and of the county are coextensive. Under the second paragraph of section 3a, the County Board of Lake County automatically exercises the powers and duties of the forest preserve commissioners, but that paragraph does not indicate whether the president of the county board automatically

acts as president of the forest preserve district. Omission of such a provision is particularly pertinent in view of the fact the third paragraph of section 3a specifically provides that the president or chairman of the county board, in counties containing a population of one million or more, automatically acts as president of the forest preserve district. If the legislature intended that the heads of the county boards in counties of less than one million population should automatically become the president of the district, the third paragraph of section 3a would not have limited that situation to counties of more than one million. The negative implication is, therefore, that in counties of less than one million population, such as Lake County, the president of the forest preserve district is chosen by the commissioners.

I also note that a Forest Preserve District is a municipal corporation. This was established in Peabody v. Forest Preserve District, 320 Ill. 454 at page 462 wherein it is stated:

"The county commissioners are county officers; (Wulff v. Aldrich, 124 Ill. 591;) the forest

preserve commissioners are not. The county and the district are two distinct, independent municipal corporations, though their territory is identical. The commissioners are not officers of the county in the performance of their duties as commissioners of the forest preserve district and are not officers of the district in the performance of their duties as county commissioners. (Perkins v. Commissioners of Cook County, 271 Ill. 449.) Though the same individuals were the commissioners of each corporation, their acts in their capacity as commissioners of one corporation had no effect as acts of the other corporation. * * * *

In the absence of express authority, the right of every corporation to select officers and agents to carry out the purpose of its formation and intended existence is said to be a common law incident. People ex rel. Walter Gallas v. Krupica, 279 Ill. App. 269; LaFayette v. State, 69 Ind. 218; People v. Stevens, (N.Y.) 51 How Pr. 103; 3 McQuillin, Municipal Corporations (3rd), sec. 12.01, p. 54 (1963).

In conclusion, therefore, I am of the opinion that in instances where the boundaries of a forest preserve district are coextensive with the boundaries of a county that the president of the forest preserve district is properly selected as such by the forest preserve commissioners.

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I do not believe that the chairman of the county board automatically becomes president of the forest preserve district in this instance.

Very truly yours,

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