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FILE NO. S-514

CONSTITUTION:
Statement of Economic Interests
Illinois Governmental Ethics Act

Honorable Henry D. Sintzenich
State's Attorney
McDonough County
Macomb, Illinois 61455

Dear Mr. Sintzenich:

I have your letter wherein you state:

"I hereby request your opinion on the following matter:

What is the appropriate remedy for the failure to file a statement by a candidate for or holder of the following offices or class of offices: (1) State's Attorney; (2) Circuit Clerk; (3) the class of persons falling under Section 4A-101(g) Public Act 77-1806; (4) class of persons falling under Section A4-101(h) Public Act 77-1806; (5) class of persons falling under Section 4A-101(i) Public Act 77-1806.

Because of the recent ruling of the State Supreme Court upholding the ethics legislation I feel

> your opinion concerning the above offices is vital because of the forthcoming election and the necessity of a procedure for removal of persons from office who fail to file the required statement as of July 1, 1972, or other appropriate sanction."

Section 2 of Article XIII of the Illinois Constitution of 1970 reads as follows:

> "All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch."

Pursuant to the direction of section 2, art. XIII, the 77th General Assembly passed House Bill 3700 which amended the Illinois Governmental Ethics Act. (Ill. Rev. Stat., 1971, ch. 127, par. 601-101, et seq.). House Bill 3700 became effective as law on January 24, 1972 (P.A. 77-1806). By virtue

of House Bill 3700, Article 4A was added to the Illinois Governmental Ethics Act. Section 4A-101 of the Illinois Governmental Ethics Act (Ill. Rev. Stat., 1971, (Supp.), ch. 127, par. 604A-101) states:

> "The following persons shall file verified written statements of economic interests, as provided in this Article:
>
> (a) Members of the General Assembly and candidates for nomination or election to the General Assembly;
>
> (b) Persons holding an elected office in the Executive Branch of this State or on the Board of Trustees of the University of Illinois, and candidates for nomination or election to these offices;
>
> (c) Members of a Commission or Board created by the Illinois Constitution, and candidates for nomination or election to such Commission or Board;
>
> (d) Persons whose appointment to office is subject to confirmation by the Senate;
>
> (e) Holders of, and candidates for nomination or election to, the office of judge or associate judge of the Circuit Court and the office of judge of the Appellate or Supreme Court;
>
> (f) Persons (except those primarily employed by the State in teaching as distinguished from administrative duties) who are compensated for services to the State as employees

> and not as independent contractors at the rate of $20,000 per year or more, and are employed by any branch of the government of this State, including but not limited to, the Illinois Building Authority, the School Building Commission, the Illinois State Toll Highway Authority, the Illinois Educational Development Authority, and institutions under the jurisdiction of the Board of Regents, Board of Governors, Board of Trustees of the University of Illinois, Board of Trustees of Southern Illinois University, or the Junior College Board;
>
> (g) Persons who are elected to an office in a school district or in a unit of local government as defined by the Illinois Constitution, and candidates for nomination or election to such office;
>
> (h) Persons appointed to the governing board of a school district or of a special district and persons appointed to a zoning board, or zoning board of appeals, or to a regional, county or municipal plan commission;
>
> (i) Persons who are employed by a school district or by any unit of local government as defined by the Illinois Constitution, and are compensated for services as employees and not as independent contractors at the rate of $20,000 per year or more."

Presently, the only sanctions contained in the Illinois Governmental Ethics Act pertaining to the filing of a statement of economic interests are found at section 4A-107 of the Illinois

Governmental Ethics Act (Ill. Rev. Stat., 1971 (Supp.), ch. 127, par. 604A-107). Said section 4A-107 provides:

> "Any person required to file a statement of economic interests under this Article who willfully files a false or incomplete statement shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary for a term not to exceed one year, or both."

The Illinois Governmental Ethics Act, however, contains no penalty for failure to file a statement of economic interests within the time prescribed by law.

In your letter you inquire as to the kind of remedies available, if any, to deal with the situation whereby a particular candidate for, or holder of, an office fails to file the statement of economic interests required by the Illinois Governmental Ethics Act.

The particular sentence in section 2 of article XIII of the Illinois Constitution of 1970 imposing sanctions for failing to file a "statement" within the time prescribed by law has, for the sake of clarity, been quoted below:

> "* * * Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. * * *"

I am of the opinion that this ineligibility or forfeiture provision is self-executing and requires no legislative implementation. (63 Am. Jur. 2d, Public Officers and Employees, sec. 188 (1972)); see also, County of Cook v. Industrial School for Girls, 125 Ill. 540; 11 I.L.P., Const. L., sec. 30 (1955). The courts have no power to grant or declare, absent constitutional or statutory authority, a forfeiture of office where none already exists. State ex rel. Vance v. Wilson, 30 Kan. 661, 2 P. 828.

It was stated in People ex rel. Hyatt v. Hogan, 257 Ill. App. 206, at p. 210:

> "* * * Since the remedy by quo warranto, or information in the nature thereof, is employed only to test the actual right to an office or franchise, it follows that it can afford no relief from official misconduct and cannot be used to test the legality of the official action of public or corporate officers. Misconduct upon the part of a public officer is not of itself ground for forfeiting his office upon proceedings in quo warranto, unless such misconduct has been already judicially established. If, however, the acts of misconduct charged against the officer are declared by statute to work a forfeiture of his office, an information will lie, and judgment of ouster may be given against the officer upon the ground of such misconduct or breach of official duty. (High's

Extraordinary Legal Remedies, 3rd Edition, sec. 618; Burkholder v. People, 60 Colo. 46, 147 Pac. 347.)"

Since the ineligibility or forfeiture provision contained in section 2 of article XIII is self-executing, when a candidate for or holder of an office violates this provision he ipso facto becomes ineligible for or forfeits the office. In this situation, quo warranto may be commenced to try the person's right to office. State ex inf. McKittrick v. Wymore, 343 Mo. 98, 119 S.W. 2d 941.

It next becomes necessary to consider the breadth of the application of the forfeiture provision in section 2; does it apply to all persons who must file statements under the Illinois Governmental Ethics Act? This determination must be made in the light of general principles of constitutional construction, the most important of which requires adherence to the spirit of section 2. As was stated in the case of People v. Barrett, 370 Ill. 478, 480. "* * * In the construction of the Constitution courts should not indulge in speculation apart from the spirit of the document. * * *" In applying the "spirit" of section 2, once ascertained, we can follow no

higher admonition than that so well expressed by the court in the case of Hills v. City of Chicago, 60 Ill. 86 when it said at page 92:

> "This case is among the first cases, arising under the new constitution, in which we have been directly called upon to interpret or construe any of its provisions. And if we now set the pernicious example of frittering away, by subtle and artificial construction, one of its plain prohibitions * * * of what value is the rest of it? With such license on the part of the court of last resort, of what avail, we might ask, is any constitution? If one provision may be thus evaded or abrogated, where is the security that others may not?"

In this the second year of our new Constitution we must eschew all temptation toward pragmatic construction, and keep faith with ourselves (who have adopted this Constitution) and with future generations who must live under its mandates, and, hopefully, prosper under its protections.

> "* * * The liberty of the citizen, and his security in all his rights, in a large degree depend upon a rigid adherence to the provisions of the constitution and the laws, and their faithful performance. If courts, to avoid hardships, may disregard and refuse to enforce their provisions, then the security of the citizen is imperiled. Then the will, it may be the unbridled will, of the judge, would usurp the place of the constitution and the laws, and the

> violation of one provision is liable to speedily become a precedent for another, perhaps more flagrant, until all constitutional and legal barriers are destroyed, and none are secure in their rights. * * *" Law v. People ex rel. Huck, 87 Ill. 385, 395.

In arriving at the spirit of section 2, inquiry into the evils intended to be remedied and the objects sought to be attained are necessary. (Hirschfield v. Barrett, 40 Ill. 2d 224, 228; People v. Barrett, 370 Ill. 478, 480; Wulff v. Aldrich, 124 Ill. 591, 598, 601.) The historical circumstances under which section 2 was drafted and adopted are pertinent to this pursuit. As was stated by the court in the case of Wolfson v. Avery, 6 Ill. 2d 78 at page 88:

> "* * * it is appropriate to consider the mischief designed to be remedied and the purpose sought to be accomplished by the provision. Since the language to be construed is a constitutional provision, the object of inquiry is the understanding of the voters who adopted the instrument. In this connection it is appropriate to consider the historical background. * * *" See also People v. Jackson-Highland Bldg. Corp. 400 Ill. 533, 536; American Breeders' Ass'n. v. Fullerton, 325 Ill. 323, 328.

The Wolfson case involved construction of the constitutional provision guaranteeing corporate stockholders the right

to accumulate their votes in the election of directors. In that opinion the court cited and quoted extensively from numerous news items and editorials, published contemporaneously with the adoption of the Constitution of 1870, as indicative of "* * * the understanding of the meaning of the words used by the voters who adopted it * * *." (Wolfson, supra, p. 88.)

The historical context of the Constitution's ethics provision need not be here reported but only briefly reviewed. The stories of scandal and corruption at all levels of government during the years leading up to ratification of the new Constitution were as fresh in the mind of the voters in the State of Illinois on December 15, 1970, as indeed such stories are today. Then, as now, corruption in government was an ever present and continuing concern accompanied by a growing loss of confidence in our political system and a waning hope for reactivation, and reinstallment in the halls of government, of the principles that a public office is a public trust. The mood of the people of the State of Illinois in 1970 was reform; and it is in the light of that mood that we must read section 2. It is the people's intent and understanding at the time of ratifica-

tion that we must delienate. "* * * [T]he object * * * is to arrive at the intentions proposed by the language used in view of conditions existing at the time of its use. * * *" American Breeders' Ass'n. v. Fullerton, 325, Ill. 323, 328.

Nor should we use hypertechnical or hyperrefined definitions of the language of the Constitution. As was stated in the case of People v. Stevenson, 281 Ill. 17 at page 26:

> "* * * The intention to which force is given in construing constitutional provisions is that which is embodied and expressed in the language of the provisions. As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution, unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention. * * *" See also Locust Grove Cemetery Ass'n v. Rose, 16 Ill. 2d 132, 139; Rosen v. Rosen, 370 Ill. 173, 174; Graham v. Dye, 308 Ill. 283, 286; Wulff v. Aldrich, 124 Ill. 591, 598; Wilcox v. People ex rel. Lipe, 90 Ill. 186, 196; In Re Estate of Trapani, 21 Ill. App. 2d 19, 31.

It is my opinion that the meaning of section 2, and the application of the forfeiture provision included therein,

construed in the light of the foregoing principles, is clear and unambiguous. The forfeiture provision applies to all State officers, whether constitutional or statutory, elected or appointed, including the members of all State boards, commissions, authorities or similar agencies, whether created by the Constitution or statute; and it also applies to all officers of units of local government and school districts, whether those offices are created by the Constitution or by statute, including as such officers the members of the boards or other governing bodies of such units or school districts.

It is apparent in reading section 2 as a whole that the intent expressed therein is to provide the public with a means of judging the interests and motivations of its officials, the better to understand and evaluate their conduct and performance in discharging the public trust incumbent upon them. Officials at all levels of government are included under the joint terms "State offices" and "offices in units of local government and school districts". The object of the section is to provide a further means of evaluating public officials, and the evil to be remedied is corruption in government by dishonest, self serv-

ing people. Achievement of those objectives at all levels of government is the intent and purpose, clearly, unequivocally, concisely and unambiguously expressed in section 2. Even without the touchstone of liberal construction of a Constitution, no other intent could be attributed to that section.

With such an intent attributable to section 2, when read as a whole, I now turn to my reasons for application of the forfeiture provision to all officers. In construing that provision, no labyrinth of technical reasoning need be employed.

In my opinion, the import of the forfeiture provision is clear on the face of section 2; it applies to (1) every official who must file a statement (2) on both the state level and on the level of units of local government and school districts. Application of that provision to state offices created both by the Constitution and by statute is supported by the case of Peabody v. Russel, 301 Ill. 439 in which the Supreme Court of Illinois was confronted with a situation similar to our current problem. In that case the court was called upon to determine whether the term "the officers named in this article" (Ill. Const. of 1870, art. V, sec. 23 [Emphasis supplied]) included only those

offices specifically referred to in article V, such as Governor, etc., or whether that term also included offices created by the statute; the court reached the latter result in spite of the use of the word "named". That result was achieved by elevating the spirit of the Constitution over a close technical definition of the word "named"; the definition finally derived by the court included the concept "authorized". See also Mitchell v. Lowden, 288 Ill. 327, 333, 334.

But we also have a more recent indication from the Supreme Court of Illinois that the term "state offices" in the first sentence of section 2 includes both offices created by the Constitution and by statute. In the case of Stein v. Howlett, _____ Ill. 2d _____ (Docket No. 45138, Filed _____, 1972) the Court was confronted with the question as to whether the Illinois Governmental Ethics Act unconstitutionally invaded the privacy of the officials required to file, in contravention of section 6, article I of the Illinois Constitution of 1970. Among other reasons for refusing to hold that the Act resulted in an invasion of the right of privacy, the court, in effect, appears to have held that the first sentence of section 2 of article 13

constituted a qualification of the right of privacy provision. This would be true only if the first sentence of section 2 included the statutorially created State offices.

The applicability of the forfeiture provision to officials of both state and local government is not only consistent with the spirit of the Constitution, as hereinbefore discussed, but it is supported by the position of the second sentence in section 2. In construing the forfeiture provision, we must not lose sight of its relationship to the remainder of section 2 (Hirschfield v. Barrett, 40 Ill. 2d 224, 228) with which it must be interpreted consistently and harmoniously. (People ex rel. Giannis v. Carpentier, 30 Ill. 2d 24, 28; People v. Feinberg, 348 Ill. 549, 566.) If the Constitutional Convention had wanted to preclude application of the forfeiture provision to local officials, the second sentence would more logically be placed either at the end of section 2 or immediately preceding the last sentence in that section. In the case of Beardstown, v. Virginia, 76 Ill. 34, the court at page 40 quoted with approval language from the case of Newell v. People, 3 Seld. 97:

> "'Whether we are considering an agreement between parties, a statute or a constitution, with a view to its interpretation, the thing we are to seek is, the thought which it expresses. To ascertain this, the first resort in all cases is to the natural signification of the words employed, in the order and grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning, which involves no absurdity and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare, is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take away from that meaning.'" (Emphasis added.)

Thus, failure to file within the time specified upon the part of candidates for or holders of office results in ineligibility for or forfeiture of that office. I can think of no more plain, concise, unequivocal, unambiguous language to use than this language taken from the Constitution.

Having answered the question as to the result of failure to file, I now turn to the five classes of persons enumerated in your letter. In view of the broad application of the forfeiture provision it is unnecessary to determine whether, under the

Constitution, the office of State's Attorney or Circuit Clerk is either a State office or a County office. Both offices are subject to forfeiture.

Your third question deals with the persons described in section 4a-101(g) of the Illinois Governmental Ethics Act (herein before quoted). All such persons are subject to the forfeiture provision.

Your question number 4 involves the applicability of the forfeiture provision to the persons included under section 4a-101(h) of the Act. It is my opinion that all persons included within that provision are subject to the forfeiture provision with the possible exception of persons appointed to a Regional Planning Commission. There are a variety of such commissions in the State of Illinois and no blanket answer can be given to apply to all.

In your fifth question you inquire concerning the persons referred to in section 4a-101(i) of the Act. To the extent that those persons are employees and are not officers, section 2 of article XIII of the Illinois Constitution of 1970 does not apply to them. Failure to file on the part of such employees does not result in forfeiture.

It is interesting to note that the Illinois Governmental Ethics Act provides for no penalty against any person for simple failure to file the Ethics Statement. The Constitution does not provide for forfeiture on the part of employees. Thus, neither the Constitution nor the Act impose a penalty for such failure on the part of an employee. Since the General Assembly was the last body to take action in regard to such statements, it is assumed that this oversight, if such it be, will be rectified by the 78th General Assembly. However, see the discussion hereafter concerning the remedies which may be pursued or the penalties which may be applied to the various persons, including employees, required to file under the Act.

While the forfeiture provision of the Constitution, as heretofore stated, applies to Circuit Clerks regardless of the designation of that office as belonging either to State government or to a unit of local government, such designation is pertinent under the language of the Illinois Governmental Ethics Act; for if a Circuit Clerk is a State officer the Act does not appear to require the filing of an Ethics Statement by a Circuit Clerk. That office does not fit under any of the

categories found in sub paragraphs (a) through (f) of section 4a-101, thus we have no clear mandate on the part of the General Assembly. It is conceivable that for the purposes of the new Constitution, a Circuit Clerk may be a State officer while for the purposes of the Act he may be a County officer. Whether a Circuit Clerk can, in good faith, rely upon the legislative omission, if such there be, in the face of the Constitutional mandate, is a matter best left to the courts.

I also call your attention to the sentence in section 2 which immediately precedes the forfeiture provision; that sentence reads:

> "* * * Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. * * *"

Section 4A-106 of the Illinois Governmental Ethics Act, in part, designates the offices in which statements are to be filed as follows:

> "§4A-106. The statements of economic interests required of persons listed in items (a) through (f) of Section 4A-101 shall be filed with the Secretary of State. The statements of economic interests required of persons listed in items (g), (h) and (i) of Section 4A-101 shall be filed with the county clerk of the county in which the person

> making the statement resides." Ill. Rev. Stats. 1971, supp. ch. 127, par. 604A-106.

There is no conflict between the constitutional provision and the statutory provision as to the place of filing. The Constitution requires that all State officers, whether constitutional or statutory, elected or appointed, including members of all State boards or commissions or similar agencies, whether created by the Constitution or by statute, file with the Secretary of State. The second sentence in section 2 of article XIII authorizes the General Assembly to impose "a similar requirement" upon officers of units of local government and school districts. The "similar requirement" provision applies both to the contents of the statement to be filed as well as to the place of filing. The Supreme Court in Stein v. Howlett, ____ Ill. 2d ____, (Docket No. 45138, Filed Sept. 20, 1972) referred to the fact that the contents of the statements differed between State and local levels of governmental officials and the reason for such differentiation when the Court said at page _____:

> "* * * Under our Ethics Act those who would be generally designated as State officials are required to list ownership interest in any entity 'doing business in the State of Illinois' if that ownership interest has a

> value in excess of $5,000, or if dividends or earnings in excess of $1200 were received from the entity during the preceding year. Local public officials list such interest only if the business entity does business with the local governmental unit with which the person is connected. * * *"

It is my opinion that the County Clerk's office has been appropriately designated by the General Assembly because its relationship to local officers parallels the relationship of the office of Secretary of State to State officers.

The use of the term "similar requirement" in section 2 was, in my opinion, very adroitly selected by the Constitutional Convention, while being a term of art, its meaning is readily apparent when read in context with the entire section. While "requirement" obviously includes, as heretofore stated, both the contents of the statement required of local officers as well as the place of filing, it equally obviously cannot be construed as applying to the forfeiture provision hereinbefore discussed. Forfeiture is not a requirement, it is a result. Thus, by use of the term "similar requirement" the Convention authorized adaptations by the General Assembly to local conditions, while at the same time mandating forfeiture upon failure

to file regardless of the nature or the extent of the requirements imposed upon the local officers. Whether the General Assembly chooses to impose either stringent or modest requirements on local officers, the Constitution has clearly announced that the wages of omission are forfeiture in either event.

Insofar as available remedies for failure to file are concerned, it should be noted that incumbents in office who intentionally or recklessly fail to file their Ethics Statement are subject to prosecution for official misconduct. Section 33-3 of the Illinois Criminal Code of 1961 (Ill. Rev. Stat., 1971, ch. 38, par. 33-3) reads, as follows:

> "A public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts:
>
> (a) Intentionally or recklessly fails to perform any mandatory duty as required by law; or
>
> (b) Knowingly performs an act which he knows he is forbidden by law to perform; or
>
> (c) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
>
> (d) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

> A public officer or employee convicted of violating any provision of this Section forfeits his office or employment. In addition, he shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 5 years, or both fined and imprisoned."

It should also be emphasized that the foregoing Act does provide for prosecution of employees thereunder. Consideration should also be given to the use of disciplinary action of penalizing an employee for failure to file and enforcing his filing of a statement of economic interest.

Mandamus may be used to order a public officer to file his ethics statement. Mandamus will lie to enforce an imperative duty imposed by law, involving no discretion in its exercise. (People ex rel. Traders Fire Ins. Co. of New York v. VanCleave, 183 Ill. 330). A writ of mandamus will be issued to compel the performance of a public duty by a public officer, where the public has the right to complain of the failure to perform it. (Fergus v. Marks, 321 Ill. 510). Where the object of mandamus is the enforcement of a public right, the people are regarded as the real party in interest. (Retail Liquor Dealers Protective Asso-

ciation of Illinois v. Schreiber, 382 Ill. 454; Murphy v. City of Park Ridge, 298 Ill. 66). The relator need not show that he has any legal interest in the result (People ex rel. Chilcoat v. Harrison, 253 Ill. 625) since it is enough that he is interested as a citizen in having the laws executed and the right in question enforced. People ex rel. Sanaghan v. Swalec, 22 Ill. App. 2d 374.

In conclusion, all public officers who fail to file a statement under the Governmental Ethics Act are subject to the forfeiture provision of section 2, article XIII of the Illinois Constitution of 1970. Candidates for elective public office are ineligible for the office to which they aspire if they also fail to file. The remedies which may be employed against public officers include quo warranto, mandamus and prosecution for official misconduct. Government employees may be prosecuted for official misconduct and are also subject to disciplinary action on the part of their employer.

Very truly yours,

ATTORNEY GENERAL