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FILE NO. S-554

FEES AND SALARIES:

Salary of County Board Member

Honorable Richard J. Doyle
State's Attorney
Vermilion County Courthouse
Danville, Illinois 61832

Dear Mr. Doyle:

I have your letter of December 15, 1972, wherein you state:

"A question has been posed to this office regarding the legality of paragraph 6 of the enclosed resolution which has been presented to the County Board of Vermilion County and set aside until its next adjourned meeting on January 9, 1973.

"Some County Board members feel that they cannot be denied their compensation for the failure of the Chairman of a County Board Committee to furnish the minutes (including the record of attendance) to the County Auditor.

"I would appreciate it if you would give this office your opinion regarding the legality or constitutionality of said paragraph 6."

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You have subsequently advised me that your county board has previously fixed a per diem compensation for members of the county board.

Paragraph 6 of the Resolution of the county board provides:

"BE IT FURTHER RESOLVED, that no committee member will receive a per diem for the Committee meetings unless the minutes are kept on the attached form(s) and delivered to the County Auditor by the Committee Chairman. The Auditor will give the minutes to the County Clerk for filing."

The Resolution of the county board amounts to discretionary action by the board in the internal affairs of the county. There can be no interference with the discretionary action of the governing officials of a county within the scope of their authority, unless such action is fraudulent or amounts to an abuse of discretion (20 C.J.S. Counties 851). So long as the Resolution is not intentionally structured for misuse or as part of a scheme to deprive a board member of his compensation, it cannot be said to be fraudulent, nor do I view the Resolution as an abuse of the county board's discretion. Therefore, the question becomes whether the Resolution was within the scope of the county board's authority.

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It is well established that a county board can exercise only such powers as are expressly given by the law, or such as arise by necessary implication from the powers granted. (Ashton v. Cook County, 384 Ill. 287). In the area of internal county affairs, the powers of the county as a body corporate are exercised by the county board. Ill. Rev. Stat. 1971, ch. 34, par. 302.

Each county has the power to install an adequate system of accounts and financial records in the offices and divisions of the county, which system may include such reports as the county board may determine, (Ill. Rev. Stat. 1971, ch. 34, par. 403), and it also has the authority to examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county, and to establish procedures therefor. (Ill. Rev. Stat. 1971, ch. 34, par. 404). In my opinion, the Resolution amounts to an exercise of all those powers of the county board.

Through this Resolution the county board has required a report of attendance of its committee members, which can be

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utilized as an adjunct to the financial records of the county. It provides a procedure for the review and settlement of claims for per diem compensation of board members who have attended committee meetings. Finally, the Resolution can be viewed as a tool to promote the effective management of county funds and business.

Thus, I view the Resolution as a managerial and financial control to assure a record of attendance and the proper payment of the per diem to a county board member for attendance at committee meetings. For the reasons heretofore mentioned, I am of the opinion that the Resolution is within the scope of the county board's authority, and is therefore valid.

You have also inquired into the constitutionality of the Resolution. Your attention is first called to subsection (b) of section 9 of article VII of the 1970 Illinois Constitution, which provides:

"(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

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Section 39.1 of "An Act concerning fees and salaries,

* * * " (Ill. Rev. Stat. 1971, ch. 53, par. 58.1) provides:

"County Board members elected pursuant to 'An Act relating to the composition and election of county boards in certain counties', enacted by the 76th General Assembly, shall receive such compensation as is fixed by the county board in accordance with the method of compensation selected by the county board. Such compensation shall be set before the general election at which county board members are elected. The chairman of the county board shall receive such additional compensation as determined by the county board in reapportioning the county.

County board members and the chairman of the county board are also entitled to travel and expense allowances as determined by the county board."

Section 8 of "An Act relating to the composition and election of county boards in certain counties," (Ill. Rev. Stat. 1971, ch. 34, par. 838) provides:

"At the time it reapportions its county under this Act, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis or on an annual basis and shall fix the amount of that salary. In addition, the county board shall determine the amount of any additional compensation for the chairman of the county board."

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It can be observed from the foregoing statutes that the county board fixes its salary. Section 9(b) of article VII of the Illinois Constitution of 1970, prohibits a decrease in the salary of an elected officer (such as a member of the county board) during the term for which that officer is elected.

I have heretofore stated that it is within the authority of the county board to enact the Resolution. The Resolution itself has no affect on the rate of per diem compensation; it neither raises nor lowers this amount. It merely provides a method of verification in the payment of per diem compensation to county board members.

Since the Resolution does not affect the rate of per diem compensation of a county board member, I am of the opinion that it is constitutional.

Very truly yours,

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